

No. 13103

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA and
LEE ARENAS,

Appellants,

vs.

JOHN W. PRESTON, OLIVER O. CLARK and
DAVID D. SALLEE,

Appellees.

Transcript of Record

In Two Volumes

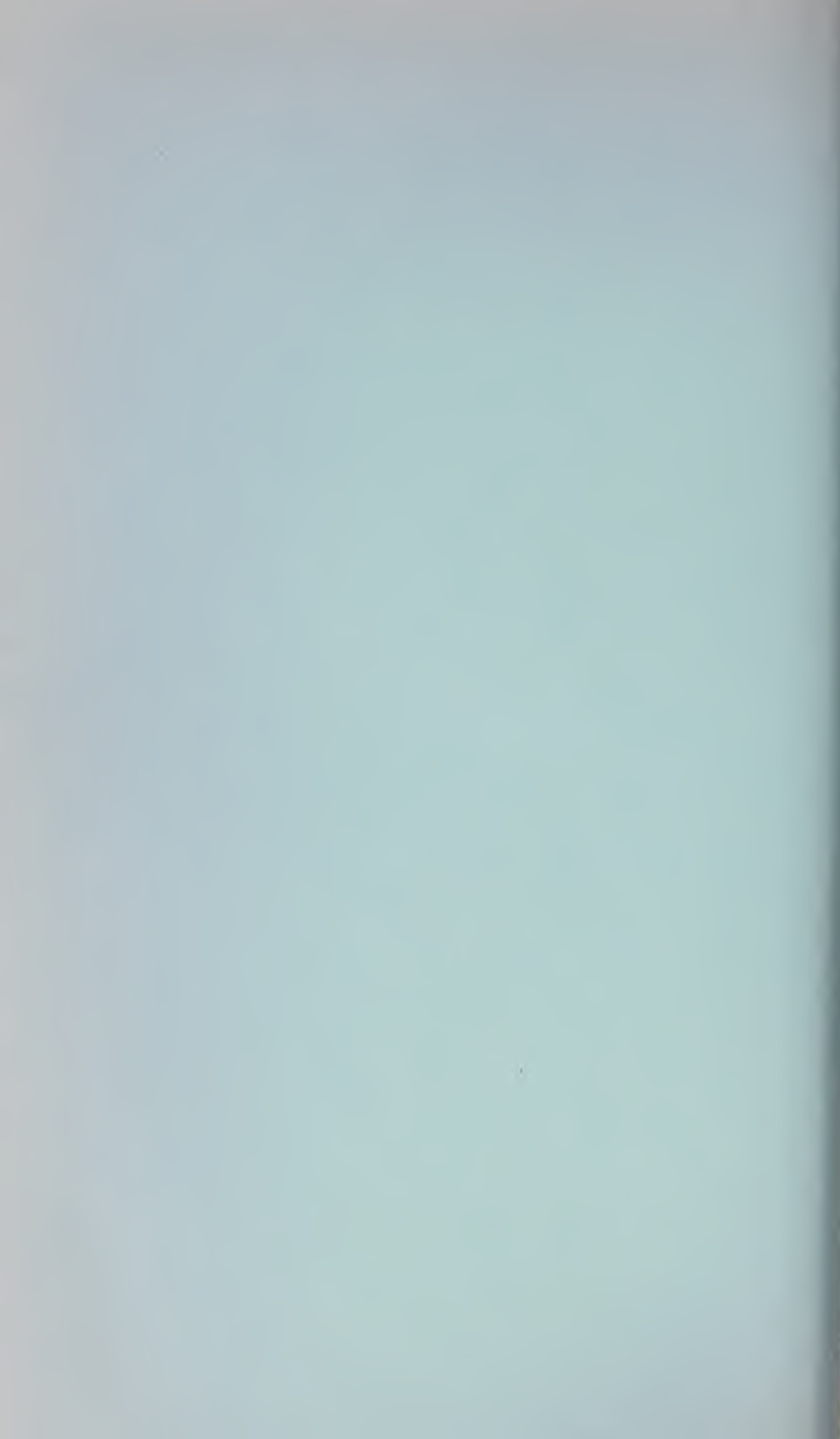
VOLUME II.

(Pages 337 to 659, inclusive)

Appeal from the United States District Court for the
Southern District of California, Central Division

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Mr. Brett: That attorneys performing services of the character that these attorneys have would not have any lien and would not have any right by the court to charge a lien upon it.

The Court: No question of a lien, Mr. Brett. I do not recall the name of the case that involved this large building and loan association over here; the name does not come to me.

Mr. Brett: Guaranty Building and Loan?

The Court: No.

Mr. Clark: The one at Long Beach? [540]

The Court: No. This State-wide building and loan association, the Eggert case, the famous Eggert case where Judge Willis, over in the Superior Court, was upheld by the Supreme Court. Judge Willis held that the assets of the Fidelity Savings and Loan Association in the hands of—what is it, Pacific States?

Mr. Brett: Yes, sir.

The Court: —Pacific States Savings and Loan Association were held in trust by the Pacific States Savings and Loan Association. I do not remember the name of counsel, but I believe Mr. Henry Harris was one of counsel.

Mr. Brett: I think he was.

The Court: The counsel who brought that suit on behalf of the certificate holders of the old Fidelity Savings and Loan Association were awarded a large fee, and every certificate holder was ordered, or, rather, the receiver and the State Commissioner as receiver or conservator were ordered to pay out of its trust funds these attorneys' fees in some com-

plicated arrangement whereby each certificate holder would bear his fair share, and that was solely under the equitable power of the court and was sustained by the State Supreme Court. I do not have the citation of the case.

Mr. Brett: I am familiar with that case.

The Court: There was no question of a lien of attorneys. It was a question—again, of course, they did not call it [541] that, but that is what it amounts to—of the taxation of costs by a chancellor between solicitor and client, the sort of thing that Mr. Justice Frankfurter explained in some detail in his footnotes in the Ticonic Bank case.

We will take the afternoon recess at this time.

Mr. Preston: May I ask how long the court will sit this afternoon?

The Court: I would like to finish this.

Mr. Brett: I would, too, your Honor. I have to go to San Diego tomorrow.

The Court: I will refrain from asking you any more questions, Mr. Brett.

Mr. Preston: The idea, I am due at my doctor's at 4:00 and I was wondering whether I should have time to get there or I should cancel the appointment.

The Court: Can you keep him waiting a few minutes, Judge Preston?

Mr. Preston: What is that?

The Court: Can you keep the doctor waiting a few minutes?

Mr. Preston: I will try my best.

The Court: Recess of five minutes.

(Short recess.)

Mr. Brett: If the court please, I am going to close my remarks as promptly as I can to give Mr. Taheny an [542] opportunity to discuss the matter, and will leave it mainly to him in reference to this matter of the contract, because he has gone into that.

I would like to just close on this point we have been discussing, though. Of course, I do not believe I can be any more exact than I have in the briefs in the argument. I would want to point out to you, as I did in the brief, that in the Arenas case the United States Supreme Court very definitely gave a definition, at least, of the effect of this Act. That is on page 29 of my brief, in which it said:

“The jurisdictional Act of 1894 (which is the Title 25, Section 345 U.S.C.) under which this suit is in the courts, requires them to adjudicate legal rights of the parties and to render a judgment which will stand in lieu of the Secretary’s action if he has unlawfully denied a patent to an allotment to which the Indian is entitled. But courts are not to determine questions of Indian land policy
* * *. ”

Now, I think it is squarely in line with the argument I have made and with the language of the Section that it is restricted solely to having the court state what the Secretary could have stated, if he had carried out his duty, to-wit, that the conditions precedent have been performed under which

this particular Indian is entitled to a trust [543] patent. Beyond that I do not believe there is any enlargement of the right to sue the Government at all.

Now, we have discussed to some extent this question of this so-called res. I have adverted to various matters and I won't repeat them, but I would like also again to briefly refer to what I did, on page 25 of my last brief. It says two unusual forms of application. Insofar as the restrictions are concerned, if the court please, they are not personal. The restrictions run with the land.

Insofar as the rights are concerned, to the limited extent that the Indian gets a right under the trust patent, they are completely personal. As I pointed out, first, of course, we have the over-all provisions that are unlimited: That he cannot sell nor can he encumber whatever interest that he may have in the lands at all.

His use of them, which your Honor pointed out under Section 403, is a very limited use—it is limited to a use for farming or for grazing. He may not, for example, use them at all for business purposes unless the Secretary, which means the United States, consents. He has no right, as such, to use them for business purposes at all. Your Honor will remember we argued that at length in the Belardo case.

Another right that is an important right that runs normally with property is denied to him. He can't will this [544] property. He can't favor one person over another. He can't disinherit one heir.

He can't add to the amount that one heir would get as distinct from another heir. It is true that his right descends, but his right descends by virtue of who may be his heirs and in the order and in the amount of those heirs, and not through anything that he himself can do. There is no way at all in which he can control, change, or affect what his heirs receive in the event of his death.

As I have said, the restrictions run with the land, no matter who has it, whether he has it, his heirs, or wherever it is the restrictions exist.

And then this other most unusual circumstance that I know of no other situation existing in the law, and I have a reasonably broad knowledge of real estate law. I know of no other situation where the grantor, whether it is in the form of a gift or whether it is for compensation, may give an out-right fee and may retain to himself, unlimited, at his discretion, the absolute right after that fee has been granted to re-impose upon it such conditions as he may elect to do. It is a most unusual situation.

Now, closing on that phase of it, if we accept the view that there is some manner in which this court may permit access to this property, it seems to me, if the court please, that just like the old trite saying that a rose by another [545] name is just as sweet, no matter whether we call it a charging lien or whatever right we may call it, the legal effect would be that you are imposing some form of charge upon this property. If you do not impose some charge upon this property and, as the petitioners have very properly brought to your attention in one of their

memoranda, if you do not accompany that with some right to effectuate the rights which accrue to that charge, that is, if you may not enforce it, then they have none. If you do give a right, regardless of what you call it, whether you call it imposing something as a form of a trust relationship or as an equitable provision or a charging lien, it is still a lien; it is the charge upon this particular property while the property is in the hands and the title is vested in the United States.

I submit, if the court please, that the only way that that could possibly be done—the only two ways that that could possibly be done would be these: One, that there would be some power in this court, by a decree, to execute a judgment. That we know we can't do, because I have pointed out in my brief there is a specific section in this Indian Code that prohibits any form of execution of a judgment against him.

The only other manner that I could possibly see that your Honor could do it would be through some form of process [546] by which you could compel the United States, through some appropriate officer, to affirmatively do something. If you do not do that, it would be nugatory. If you can't levy execution on it and the title is in the name of the United States, how could the title be gotten out of the United States or any right be gotten out of the United States, excepting if there would be some manner in which this court could compel some one with authority to divest the United States of that title?

I do not think it can be gainsaid that a mere

recording, for example, of a decree in the form of a judgment could effect a lien upon property in the name of the United States. There is no such thing. You can't have a lien against the United States.

The only way in the world that you can affect property that stands in the possession and is recorded in the name of the United States is to have some manner whereby the court has a power to require some officer or agent of the United States to transfer that title. If you can't do that, you can't do anything about it. I mean whether you want to or not. I mean it just can't be done.

The only other manner, of course, would be, as I say, through execution, which is an indirect manner of doing that. In other words, there are various forms, of course, of execution. There is the normal form where the sheriff or [547] the marshal or whoever it might be seizes it through a process and submits it to sale and disposes of it, and then executes his deed, or he might appoint a commissioner or a receiver or some other agent of the court. But the ultimate result would be that there would be someone lawfully authorized to dispose of property belonging to the United States; and that, I submit under all the decisions here, cannot be done.

Even the Equitable Trust Company case did not assert that right. The Equitable Trust Company case were funds; they were physical assets; they were in the hands of the court, not in the hands of the United States, and in which the United States had expressly requested be disbursed in certain ways and asked the jurisdiction of the court on that basis.

Of course, you had the United States before it, or, rather, I mean it had the United States before it. It could say: You have now sought this jurisdiction. You have submitted to this court, therefore, you can be assisted. And I think that the court there had the power, which the court here does not, that I pointed out before.

There it had the power, properly and rightly, to say to some official of the United States Government: Now, here, out of these funds which you are holding as an officer of this court, turn over so much to so and so. And I think it would have the further authority, if they did not do it, to [548] use all of the authority that this court has to enforce that right.

Here you have no such authority. If you make such an order, against whom and by whom could it be enforced?

I should like to have counsel answer it. I have searched and I can't conceive of any possible way that you could.

Now, there is just one other or two other points that I want to briefly refer to. I would like permission, if the court will permit, to save time. I feel that it is appropriate that there should be some comment with reference to this appraisal of some million dollars; and I do not feel it would be appropriate to take the court's time. I can do so, I think, on approximately six sheets of paper.

What I want to point out, briefly, is this: I want to point out expressly the manner in which that was arrived at, which I think that your Honor can de-

termine as a matter of weight. I want to show you, exercising the judgment that I know you are, that it was an improper form or technique of approach to the appraisal.

The Court: What do you think the property is worth?

Mr. Brett: Sir?

The Court: What is your contention as to the value of the property, approximately? I am not attempting to commit you to it.

Mr. Brett: Your Honor, I do not believe——

The Court: They say it is worth a million dollars? What do you say?

Mr. Brett: I would say, your Honor, I do not believe that it is worth in excess of a third of a million dollars.

The Court: All right. The difference between it would not matter, in my conclusion.

Mr. Brett: Of course now, that is on a fee basis I am taking that. I do not believe the trust patent, as such, has anything but a very nominal value.

The Court: We are speaking of the fee simple title?

Mr. Brett: Yes; of the fee simple title.

The Court: Do you think it is around a third of a million?

Mr. Brett: I would say I do not think it is worth more than that. I do not think it is worth that, but I would say at the top, I do not think it is worth more than that. That is my view of it.

The Court: I will be glad to have anything you wish to submit. I will say, so far as the court is

concerned, it would not matter whether it was 300,000 or a million.

Mr. Brett: Were you asking me a question, your Honor?

The Court: I say, it would not matter to me as far as I am concerned whether the value was 300,000 or a million.

Mr. Brett: I see. The reason, I feel, your Honor, with due deference, I would have to say this: I think, either [550] on a quantum meruit basis, if you decide that is the remedy, or on a contract basis, you have to fix it in money. I do not believe that there is any legal method that you could fix it in kind. In other words, these attorneys contracted originally for money.

The Court: They contracted on a percentage basis, did they not, originally?

Mr. Brett: Originally for the value of land in money, the market value of the land, not percentage of the land itself.

It is true they did make a provision which they have not made any attempt at all to follow; they did make a provision that if there was a disagreement—and so far there has been no disagreement, as I pointed out in my brief—and this is the most astounding thing I have ever seen, and I say it in all sincerity, it is the first time in my experience that I have ever seen anyone making a claim without doing two things: One, finishing the job. They did not finish the job. They have neither sought a patent nor have they endeavored to reach any agreement with the client as to compensation, nor have

they sought in behalf of their client to have restrictions removed. They have done nothing. They have simply come in after they have gotten a partial proof of what they agreed to do.

But secondly, I have never known a case until this one—I [551] understand Mr. Taheny has heard of some, but I have not—I never heard of a case yet where the attorneys ever sued for their fees unless they first, at least, rendered a bill to a client to try to get a client to make some arrangement agreeably. They have made no effort to try to fix some arrangement, and then arrange with the Department of Interior and say: “Now, can we work it out?”

The Court: Arenas discharged them, did he not?

Mr. Brett: Sir?

The Court: Didn't Arenas discharge them?

Mr. Brett: No, sir. They have never been discharged by Arenas. They do not allege so. It would be news to me. As far as I know, they are still in charge of it, excepting, of course, in this particular instance he had to have some particular defense of this particular matter. I do not say that it is improper. I just say it is novel to me.

The Court: I just assumed from the facts that Lee Arenas was represented now by other counsel; that they have taken over.

Mr. Brett: To the best of my knowledge, your Honor, the first knowledge that Lee Arenas had that they were making a claim for a fee or anything at all was when he was served with an order to show cause.

Mr. Preston: No; that is not true, and you know, yourself, we tried to negotiate with your department to put [552] a proposition up to the Government. You know that.

Mr. Brett: That is true, after the suit was brought.

Mr. Preston: Counsel and we have been in numerous conferences, if the court please.

The Court: Let us go ahead with the argument, gentlemen.

Mr. Brett: I mean I think I am entitled to answer just that one thing. It is true that something was proposed after we were in the midst of the litigation, and the answer I got: If it is submitted to the court, we do not want to take any action.

My point was, nothing had been done in advance before that. Maybe I have been misinformed. If I have been misinformed, had any word gone to Mr. Arenas about this matter until he was served with the order to show cause?

The Court: What matter?

Mr. Brett: With reference to the fees or anything?

The Court: I could not say on that.

Mr. Preston: I could say.

The Court: Are you suggesting that the Secretary of Interior is disposed to settle this matter or be a party to the settlement of it?

Mr. Brett: No, sir; I am not. I do say this:—

The Court: It would not do these attorneys any good to talk to Lee Arenas. It would be like talking to a young boy [553] about a hundred dollars

when he does not have anything but marbles in his pocket, wouldn't it?

Mr. Brett: Well, I don't know that that would be true. I don't know that if they would suggest some arrangement with Lee Arenas and would apply to the Secretary of the Interior, that he would not approve that arrangement. I have no way of knowing, your Honor.

The Court: In the analogy I was making no reflection upon Mr. Arenas, but just like in the case of a boy, his father would have all the money there was in the family, and in this case Uncle Sam has all the money that Mr. Arenas needs, doesn't he?

Mr. Brett: That is true; that is true.

The Court: Why talk to Mr. Arenas if the Secretary of Interior has the attitude that no matter what it is, he is not paying anything?

Mr. Brett: Your Honor, I personally think that is an erroneous view.

The Court: Well, I hope it is and I just misunderstood it.

Mr. Brett: Certainly there is nothing there in the pleadings, nothing in my instructions, nothing in my information that I have received to even intimate that.

The Court: I understood you to say when you first came in here, and probably it was a misunderstanding, but it shows [554] how those things can arise. Perhaps I misunderstood you, but I understood you to say that the Government did not care how much these petitioners get out of Lee Arenas, but as far as the Government was concerned, it was

not paying one penny out of Lee Arenas' account. That is my understanding of the attitude, and I assumed you were expressing the attitude of the Secretary of Interior.

Mr. Brett: I was, but I do not remember saying it in that language, or, if I did, it was certainly inapt.

The Court: There was not any mention of the office, but that was my impression. You said, that as far as the rights against Arenas were concerned, the Government was not interested.

Mr. Brett: That is correct; yes, sir.

The Court: I just misunderstood you. If the Secretary of Interior is disposed to settle this matter, I think you gentlemen should all try to settle it.

Mr. Clark: Your Honor, we have done it. We have put it in written form and the Secretary has turned it down cold. And if you will look at the Government's letter of instructions to Mr. Brett—

The Court: I do not want to hear anything about it.

Mr. Clark: This is in evidence here. Didn't you put in evidence here your letter of instructions, asking relief from your former commitment to this court and counsel? [555]

Mr. Brett: No; I did not.

Mr. Clark: Oh, you did not?

Mr. Brett: No, sir.

Mr. Clark: I beg your pardon.

The Court: I do not want to hear any details of it. But if there is any possibility, of course, it is a matter that should be settled. I will decide it.

Mr. Brett: I understand that. What I wanted to

say, would your Honor give me permission to do this: I would like to point out about six cases in this Gallagher Report where there are broad discrepancies in reference to the same subject. As an illustration, I can show where in one instance he evaluated one piece of property for one purpose or a certain face value, and evaluated that same piece of property at another page at a different value. So you cannot take the general character of the omnibus phase of this report, in which he throws practically everything into the kitchen sink and then comes out with an answer.

The Court: Mr. Brett, of course, if I am bound to determine the value of the property and make an award in dollars, that is one thing; if I am not bound so to do, I do not intend to do it. If any award is made, as I indicated before, I intend to make it in terms of fractions of percentages.

Mr. Brett: Then, may I put it this way, your Honor? [556]

The Court: Do you feel I am bound?

Mr. Brett: I think you are.

The Court: Bound to translate it, here and now, into dollars, instead of at some later time?

Mr. Brett: I think you are.

The Court: Instead of stating a formula, am I bound to put the dollar sign and put some digits after it?

Mr. Brett: I think you are, your Honor. Yes, sir; I think you have to put it in money. But if you decide that you are not—I am perfectly willing to do this, however: I am not trying to impose conditions on the court. I mean what I feel is this: If

your Honor is undecided on that point, I would ask leave, if you do determine it becomes your duty to fix it in money, would you then give me leave, instead of taking the time now, to briefly comment so you will understand our reason for believing that you should give an actual figure? And I will limit myself exclusively to pointing out matters of debate recited there, to show incompetent matters considered and discrepancies in reference to the same subject matter to a very broad extent, amounting to thousands of dollars on the same property.

I would like to point that out, because your Honor does not have time to search out all those things and I think it would assist you.

The Court: If I had to determine the value, I would [557] want a full discussion of all of the reports.

Mr. Brett: Then, if we may have that, I do not want the other.

Then the only other thing I want to say, because I understand Mr. Taheny is going to discuss this contract, I would just like to make two brief statements in reference to the contract and why I believe that the 10 per cent contract is the one which must prevail.

The evidence shows very clearly, if the court please, that the attorneys took extreme care in drawing that first contract. They were dealing with subject matter which they believed important, as is shown, and they covered all phases of it. They not only covered these percentages, they covered the property involved, they covered the rights involved.

They made it specific that they were obligated to go through to the final court of last resort. And then, in addition to that, they discussed the possibilities of the disagreement and possibilities of remedies as between themselves—a very carefully drafted document, one which, by the testimony of Mr. Clark and Mr. Sallee, was revised on several occasions.

There is evidence here to the effect that it is their view that it was superseded by this subsequent document. The first thing that I would ask your Honor to consider, and I think you will consider, is why use a mimeographed [558] form? It just does not seem consonant with the other work that these attorneys did, including the careful preparation that they made in respect of this first contract, that they would use a mimeographed form if, in fact, the intent and purpose was to make a written recital of a previous oral arrangement.

I would ask you to consider that. It just does not seem to me consonant with the other careful detailed actions of these attorneys.

The next thing, the letter which was introduced, which was together with one of the letters which was introduced here before, both disclosed that Mr. Sallee, considerably subsequent to the time when Judge Preston was actually employed, considerably subsequent to the time when they say they had the original oral arrangements by which they informed this Indian that they felt that it was necessary to employ another eminent counsel, wrote letters in which, to all ordinary appearances, was a first introduction to them how to act. Those letters, particu-

larly, it seems to me, they could not possibly have acted in that light if previously there had been detailed conversation—not one—Mr. Clark recites there were three at least in which they had discussed relative merits of getting Judge Preston, and saying: “I will carry on if you want to, but we think we should have Judge Preston,” and yet then later write this letter and say: I have just examined and approved such and such a document or petition for certiorari, and we have engaged the services of Judge Preston. And it says who Judge Preston is. Why would they have told them who Judge Preston is if they had already told them orally? That is the second thing.

The next thing I would ask you to consider is this: Mr. Sallee supposedly stated that when Judge Preston was approached and arranged to be employed, that he made a partial assignment of the first contract to Judge Preston. Judge Preston had knowledge of it and was given a copy of it and he made a partial assignment of it.

I think, very clearly, that having accepted that assignment, necessarily Judge Preston accepted all obligations under that contract, and the obligations under that contract were to carry it through the court of last resort by Mr. Sallee and just whom he chose to associate.

Now, it would seem to me that, irrespective of whether it be absolutely true that the fulsome story was as here stated, that they had oral conversations in which they told Mr. Sallee: Well, now, here, it would be beneficial to get Judge Preston, etc., the

fact, nevertheless, was that it was their bounden duty to tell Mr. Arenas: But nevertheless, we have given Judge Preston a part of this contract and he has become obligated to you to carry on. Under what other circumstance could he accept a part of that contract? [560] What would be the basis of it?

Now, there isn't possible any slightest indication that this man had independent legal advice; and I am satisfied that no attorney—I say “no attorney” and I emphasize it—could possibly have advised that Indian other than the fact: Why, Mr. Arenas, there is no consideration running to you. You do not need to give Mr. Preston one cent under this contract. These attorneys are obligated to you now to go through the court of last resort, every one of them. There is no reason why you should increase what you should pay, after they have made that binding bargain with you.

I want to leave those thoughts with you when you arrive at this determination, as to whether or not this mimeographed form which, in answer to your Honor's question, Mr. Clark said specifically in the last testimony on March the 8th—I take it your Honor asked the question—you said to Mr. Clark: Well, did you have agreements similar to the 1940 agreement with all the other Indians? Mr. Clark said, “yes.” And the court asked: Did you get this mimeographed contract with the other Indians signed at the same time? Mr. Clark said: Yes; that there was some difference in date, according to when we could get them signed up.

Under those circumstances, if the court please,

considering the fact that these men were experienced, that they [561] were men who exercised care in all of the other acts that they did, I cannot conceive of their utilizing this mimeographed form which is cast in the regular form that you could get in any form book, Jones, Jones or any of them have a form power of attorney. I can't conceive of their using that mimeographed form, which does not refer to the property, does not refer to the previous contract, does not refer to any of the previous arrangements, does not say in any form or manner that it is an exemplification of nor is it intended to recite the provisions of a subsequent arrangement made, does not say that anything respecting it supersedes anything, how they could rely upon that. And I ask that your court give that very serious consideration, together with the fact that they had accepted, each and every one of them, assignments of the original contract and were duty-bound thereunder to perform under its obligations.

Mr. Taheny: Your Honor, the particular point that I would like to address the court on is the question of fact in this case as to whether or not there was an abrogation of that 1940 contract either by a subsequent written contract entered into for that purpose or by an executed oral agreement, as suggested yesterday in the brief filed yesterday.

When I went over this case and was first employed, I came in with no idea except I feel that Mr. Arenas was [562] entitled to representation. I had no idea of the facts. I knew who was opposed to Mr. Arenas. I saw their allegations in their peti-

tion and I had conversation, of course, with him and his wife.

I took it that the testimony put in here by Mr. Clark and Mr. Sallee would be probably what it was. I was somewhat surprised when I found out the case went on quite sometime before they put in the testimony of these conversations relative to the alleged abrogation of that 1940 contract. I was very much surprised when, on February 20th, they submitted the case and it was not until after they had submitted the case on the evidence that Mr. Clark, at a subsequent hearing, came in and gave this testimony.

Now, it is my duty as a lawyer to set forth the evidence as I see it; and I will say this to your Honor and to these attorneys, sincerely, that if I thought for one moment that I was on the wrong side of the case as far as the truth is concerned, I would not utter what I am going to say.

Now, I do not think these attorneys, and there is no evidence to satisfy me or convince me that they are deliberately saying anything that is not true. But knowing attorneys, knowing how they operate, the average attorney, when he has a case that goes on for several years, can very seldom report what the facts are when questioned until he refers to his file. He will very often find the notes [563] and memorandum in his file to be contrary to what his impression was of the facts.

In this case there has been no memorandum whatever introduced to show that any of these attorneys refreshed their memory by anything, and I want to

say this, your Honor: That Mr. Sallee in this case carried on a very, very extensive conversation with Mr. and Mrs. Arenas. These letters are not in evidence, but I have just a few of them here—a very extensive correspondence, writing them continually, and never once in one of those letters did he at any time refer to the fact that there was an abrogation of that 1940 contract or that there was to be an added compensation by reason of the association of Mr. Preston.

The more I have seen of this case, your Honor, I can't help but feel that the truth is shining out here in such a convincing way that there can be no question but that Mr. Arenas—just an humble Indian—is on the side of truth and that the witnesses for the petitioners are in grievous error, in great error.

Now, can you imagine, your Honor, can you imagine that the facts would be that in 1943 the attorneys would tell Mr. Arenas and his wife that they intended to associate Mr. Preston; that in doing so it would be necessary to pay a higher fee; and if he would pay the higher fee, they would continue? And the testimony here is supposed to be that; that they told him the name of this man, who he was, that he had been on the Supreme Court, and that they should have him and he would lend a lot of prestige to the case.

Can you imagine that happening, and Mr. Sallee continuing as the man who is in everything and doing all the letter writing, and then on September 24th Mr. Sallee writes as follows:

“I just O. K.’d the final draft of the Petition for Certiorari in Lee’s case this morning. It is now in the printer’s hands and will be filed this coming week. We have associated with us on this, one of the leading lawyers in the West, a man who used to be on the Supreme Court of the State of California, and he is”——

This says “an”; I suppose he means “as”. “as enthusiastic as we are that the ultimate outcome should be in our favor. I don’t know what the printing bill will be, as we have to print a good many of these”——

The rest is not important.

The Court: What is the date of that, again?

Mr. Taheny: September 24, 1943. That letter right there, your Honor, is a memorandum showing that Mr. Sallee and Mr. Clark are mistaken when they say that they told Mr. and Mrs. Arenas before that date that they were going to [565] associate Mr. Preston if they agreed to pay an additional fee. There can’t be any question about that.

Now, we all know that truth must be consistent with itself, but the inconsistencies of this case are very glaring and very damaging; and if it were not for the fact that there is just a humble Indian on one side and dignified and well-known, prominent attorneys on the other side, there would be no necessity for even arguing it. In my opinion, why, it stands out. But now, can you imagine this: Mr. Preston asked at the last examination if there was an executed oral agreement. He put that in there because he would get around the rule that requires

a consideration, where one contract modifies another.

Now, that, your Honor, if I do say it—and I say it respectfully, too—the whole thing is ridiculous. Now, for example, here we have Mr. Sallee and his testimony which is in this record, showing that he assigned part of his rights to Mr. Clark and part of his rights to Mr. Preston, part of his rights under the 1940 contract. That is what he testified to. It is in the interrogatories on file here.

All right. Would he be assigning his rights under the 1940 contract if there were any truth at all in the assertion that there was an executed oral agreement to rescind and completely destroy the 1940 contract?

Of course not. There, again, you see the inconsistency [566] standing out. These men knew the 1940 contract was never abrogated and that is why the assignment was made, and that is why that testimony was given here.

Now, if there was an executed oral agreement—I am going to go a little fast, your Honor, because I know it is going to be late—if there was an executed oral agreement, wouldn't that have been pleaded? And there is no pleading here in their petition. Their petition is founded upon the 1945 contract, the alleged contract—I call it an agreement and something that was signed, but it is not a contract as far as this case is concerned.

That ties in with what Mr. Brett said. Why would these gentlemen delay until after the proceeding in the Supreme Court had been terminated

and until the matter had come up for trial the second time and until that trial was finished, and then after all that is done, then go and have a written agreement with Mr. Arenas for added compensation in this particular case?

Well, we know they had the agreement signed. But the very fact it was on a mimeographed form and that they were rounding up a lot of other Indians at the same time, and the fact that Mrs. Arenas, who is not a party to this case, signed a facsimile of the very same contract, shows that those contracts were obtained at that time for some other purpose and not for this particular case. [567]

There is only one suit in which Mrs. Arenas was involved, and that was the ejectment suit. Mr. Preston said yesterday a series of ejectment suits they brought, covering the very same issues. That may be and it may not be. Whether it does or not is material, because the hearing here today is not for fees in an ejectment suit.

The Court: Mr. Taheny, this proceeding is not an action upon the contract, either, is it? Does the contract have any office here other than to fix the maximum beyond which the court could not make an award?

Mr. Taheny: You mean the 1940 contract?

The Court: Any contract.

Mr. Taheny: I think, your Honor, in their petition——

The Court: Suppose in an equity case an attorney recovered a large sum of money; the court thought he was entitled out of the fund to a third

of it; the client might bring in a contract and say he agreed to do it for 15 per cent; would not that be the only office of the contract, to fix a maximum beyond which an award would not be made out of the fund?

Mr. Taheny: Well, that may very well be, your Honor, but it is also a maxim of equity that a party cannot recover on a theory that is contrary to something which he pleads when he brings himself into court. They can't come in here and plead that they were relying on a written contract of [568] 1945, and then plead that there was an unexecuted oral agreement on which they were relying, or, rather, an executed oral agreement is what I should say.

The Court: What, in your view, is the effect of your provision of the 1945 agreement providing for a quantum meruit arrangement and the reason that would serve? What effect did that have, in your view, upon the 1940 agreement providing for a 10 per cent fee?

Mr. Taheny: Well, you mean if I assume that that contract was signed for the purpose of qualifying the 1940 contract or of superseding it?

The Court: It does not make any difference what purpose it was signed for, does it? The contract of 1940 is broad enough to cover any conceivable services rendered on behalf of Lee Arenas in connection with his allotment, isn't it?

Mr. Taheny: That is right.

The Court: It would cover the defense of an ejectment action, would it not?

Mr. Taheny: It seems to me it probably would.

The Court: I do not know. The attorneys are not bound to carry it through to any given end, irrespective of their judgment in the matter, but the 1940 agreement seems broad enough to cover any conceivable services that the attorneys might render in connection with Arenas' claim for an [569] allotment.

Mr. Taheny: That is right.

The Court: Now, to defend his possessory rights there would be part of it, would it not?

Mr. Taheny: Well, it very likely would, your Honor.

The Court: And if it is, or, to put it this way: If the 1940 agreement covered the situation, what was the occasion for the change in the arrangement to a quantum meruit, assuming, as you say, that the ejectment suits occasioned it, assuming that this mimeographed form was really a convenient form to file in each action to show the authority of the lawyer to represent, which theretofore had existed under the 1940 agreement. What can we do with that last paragraph which says that the compensation shall be on a quantum meruit basis, not a 10 per cent basis?

Mr. Preston: If services were performed after that date.

Mr. Taheny: Your Honor, I feel that that 1945 contract in a case of this kind—I am going to withdraw that remark. I would say that as far as this is concerned, No. 1321-O'C, that 1945 agreement must have a consideration. In order to have any effect, it should. In other words, it must be a contract.

The Court: Well, the consideration would be the continuing service, would it not? [570]

Mr. Taheny: No; that is not. That is the point. I have cited in my brief case after case there that holds that where there is already a contract obliging that party to do what the second agreement calls for, there is in such case no consideration for the second agreement.

The Court: But those are cases, Mr. Taheny, where the other party is absolutely bound to do a certain service. These attorneys were not bound, were they, to go to the Supreme Court?

Mr. Taheny: Yes, your Honor; I say they were.

The Court: Whether their judgment took them there or not, were they bound? Suppose they had gone to the Circuit Court and they had lost and Lee Arenas said, "Well, I want to go on. I want to go to the world court, if I can. I want you to go on and you are bound under this." And they said, "Why, no. There isn't a chance. We haven't any basis for relief from the Supreme Court. There isn't any chance." Was Lee Arenas entitled to have them go, anyhow?

Mr. Brett: Yes.

The Court: Point that out to me in the contract.

Mr. Taheny: Your Honor, on page 4, line No. 17, that the attorney "shall pursue the litigation in question to and through the Court of final resort, unless authorized by the Secretary of the Interior to terminate the proceedings at an intermediate stage thereof;". [571]

The Court: Well, the Secretary of the Interior washed his hands of it.

Mr. Taheny: That is not material.

The Court: So there was every reason to dispose of this contract, wasn't there, after the Secretary of the Interior wrote his letter of June 3, 1943?

Mr. Taheny: No. The contract says they must pursue this case to the court of final resort unless the Secretary of the Interior authorizes them to terminate the proceedings before going to the court of final resort.

The Court: That would not be an absolute commitment, would it?

Mr. Taheny: I beg pardon?

The Court: The Secretary of the Interior refused to have anything to do with it.

Mr. Taheny: All right; therefore they had to carry this case to the court of final resort.

The Court: Did not the consideration fail upon that?

Mr. Taheny: No; I don't think so. These men made a contract to carry the matter to the court of final resort. I do not see how they can get out of that obligation. That is the 1940 obligation.

The Court: Is it an absolute obligation, or is it an obligation to do so unless someone passes on it and it is met with the idea in view of mutual mistake of fact, that [572] the Secretary of the Interior would act in the matter?

Mr. Taheny: No; I do not think so, your Honor.

The Court: What effect would that have on this contract? It is replete with provisions looking to the

Secretary of Interior to take some action or give some approval, and he refuses to have any part of it. What effect would that have upon it?

Mr. Taheny: Then that means their performance, their obligation continues, because, if the Secretary does nothing, then he has not terminated their continuance.

The Court: That is not what was contemplated by the contract, is it? The contract contemplates intelligent action, consideration. The Secretary of the Interior says: I just won't look at it. I won't have any part of it. He said, in effect, it is none of my business, didn't he?

Mr. Taheny: All right. I would say in that case, if these attorneys went to Mr. Arenas and said, "Mr. Arenas, we have lost out in the District Court; we have lost out in the Circuit Court. It is our opinion we should not go any further." If Mr. Arenas agreed, all right; they could end it there. If Mr. Arenas said, "No; I want you to continue. I insist you fulfill your contract," they are obliged to go on and fulfill that contract.

That is the point, a very important point. They were obliged to do by that 1940 contract everything which they [573] did do in this case, therefore, there was no consideration for the 1945 agreement insofar as it relates to this action. And I am satisfied that it was never signed with any intention of applying to this particular action, for many, many reasons.

The Court: Wasn't it signed for the purpose of applying to the services thereafter rendered?

Mr. Taheny: Your Honor, the testimony of Mr. and Mrs. Arenas, or Mrs. Arenas particularly, is that it was signed in connection with the ejectment suits. The ejectment suits were pending against about 14 of these Indians.

The Court: I recall all that.

Mr. Taheny: Yes. There is a conflict on that point. Your Honor will have to resolve that conflict.

But bear in mind these other things I have pointed out and bear in mind the care which was used in the drawing up the 1940 contract, all the correspondence that passed, and never a word said, except this letter which I have put in evidence; and that letter itself indicates that nothing had been said, as these witnesses testified, to Mr. or Mrs. Arenas about the associating of Mr. Preston. That letter, by its very language, indicates that that was the first knowledge that Mr. Arenas was getting that a man had been associated. They did not even mention his name. They would not write and say: We are associating a man who has been [574] in the Supreme Court and he is a very able man, which was Judge Preston. They would not be doing that.

It shows that Mr. and Mrs. Arenas are correct in their testimony, and whenever a discussion took place about Judge Preston, it took place after he entered the case, and that he entered the case not on the strength of the oral agreement to pay an increased fee but he entered the case on the strength of the 1940 contract with respect to which he had received an assignment along with Mr. Clark.

The Court: What is your view as to the quantum meruit? What value is to be placed upon the services?

Mr. Taheny: I would not have said a word, would not have brought up the subject, your Honor, at all except for the reason I am satisfied in my own mind that the 10 per cent contract controls here. It controls all the facts and it controls all the law.

The Court: That is not my question. My question is: What is your opinion, as a lawyer, as to the quantum meruit value, the reasonable value of the services these attorneys have rendered Arenas?

Mr. Taheny: If we want to discuss that particular feature, we have to divide the case up, I think, between the services of Mr. Clark and Mr. Sallee, on the one hand, and Mr. Preston, on the other hand, because they say under their theory that this 1945 contract was signed solely because of [575] the association of Mr. Preston, who came into the case after it had been going about three years.

The Court: Well, the arrangement was said to have been made way back in 1943, was it not?

Mr. Taheny: That is what I say, the case had been going until 1943 before he came into the case.

The Court: And it is said that this 1945 contract was occasioned by these ejectment suits—merely stipulates the measure of compensation which had heretofore been orally agreed upon.

Mr. Taheny: That is their theory, your Honor, yes. That being the case——

The Court: What would you say now the judgment is final—in your opinion, under all the cir-

cumstances, for all three lawyers 10 per cent of the value of the land is a reasonable fee?

Mr. Taheny: Your Honor, I was proposing to divide the answer up.

The Court: I was trying to save you a little time.

Mr. Taheny: Yes.

The Court: I thought you could just tell me if you want to.

Mr. Taheny: I feel this way: That Mr. Clark and Mr. Sallee having agreed for 10 per cent and having agreed to carry the case all the way through for 10 per cent, that they [576] should keep their bargain, and no reason for added compensation to be paid by reason of Judge Preston. I would say that, since he came into the case after the case had been tried and after the matter was to go up on appeal.

The Court: Judge Preston entered the case after the action had been dismissed, not after it had been tried.

Mr. Taheny: Well, I mean that, yes; after it had been dismissed and after it had gone to the Circuit Court of Appeals that ended the case. The grounds of appeal had been set forth in connection with the preparation of the transcript for that appeal, and the same two grounds were used in the petition for certiorari as were used in the Circuit Court of Appeals case, and the same points were made in support of those grounds, the same four points, in the same order and supported in about the same way.

I can't agree with Mr. Cosgrove that there was

any great difference between the petition for certiorari and the brief in the Circuit Court of Appeals. I have gone over them; I have looked over the record and at the trial brief.

The Court: The difference was in the result, was it not?

Mr. Taheny: Yes, your Honor; the difference was in the result, but that could not be charged to the brief, I think that difference was in the difference in the court and in the attitude of the court. [577]

The Court: Mr. Arenas did not do it himself. These same lawyers did it.

Mr. Taheny: That is right.

The Court: This is one of those situations where there was a very great contingency, wasn't there? It becomes greater all the time. There was a great contingency upon victory. Now there is a great contingency upon recovery, and I am speaking now of contingency of victory alone. **Results counted, didn't** they, because, without results there was no means to pay for their services; isn't that correct?

Mr. Taheny: That is right.

The Court: These results would weigh heavily, would they not?

Mr. Taheny: I think so.

The Court: So we have a successful result. Now, it does not accomplish anything to say: How many hours did Mr. Sallee work; how many hours did Mr. Clark work; and how many hours did Judge Preston work, does it?

Mr. Taheny: That is right; that is right.

The Court: What is the result worth?

Mr. Taheny: That is right.

The Court: The labor was done and I have no doubt it was considerable, probably more considerable than if they had been working in an open field. I think that all lawyers would assume that if you are working in a very close field, [578] where you are hemmed in by unfavorable precedent on all sides, you haven't much room to operate in, have you? And it may be you could say: Well, Judge Preston was just lucky he happened to say the thing that caught the eye, or it may be that you could say that all anyone needed to do was to get this case before the Supreme Court and the rest of it followed. We do not know how much, but we do have to determine what is the reasonable compensation for these lawyers for the results they achieved for Lee Arenas.

Mr. Taheny: Well, I do not think that that is the question, your Honor. I think the 1940 contract provides and covers that, and therefore I haven't given any thought——

The Court: Now, Mr. Taheny, I ask you to lay aside the contract and tell me your opinion on a quantum meruit basis, as an officer of this court. If you do not care to do so, that is all right.

Mr. Taheny: I do not care to do so as regards the three attorneys, because I have given no thought to that. I have given some thought as to what is the value of Mr. Preston's association.

The Court: All right; tell me that.

Mr. Taheny: Well, I feel that the association of Mr. Preston along with that of Mr. Clark and Mr.

Sallee did not add 150 per cent to the value of the services. In my opinion, probably it did not add more than a quarter, 25 [579] per cent, to the value of the services. That is the way I look at it, because——

The Court: Now, translate that for me, will you, please?

Mr. Taheny: Well, I take it this way: These men made a contract which they, at the time they made it, assumed was fair, testified it was fair, a ten per cent contract. After it is all done and they have the result, they want more. But sometimes an attorney guesses wrong when he makes his percentage, but they were basing it upon the fact this land was very valuable. They had that idea in mind. Perhaps they did not know the value, but they were gambling on that and they fixed their 10 per cent.

Bear in mind they have another case they intended to file in the same category as this one, with no more fees to it.

The Court: Mr. Taheny, if they are bound by the 10 per cent, it does not make any difference whether it is a good deal or a bad deal, does it?

Mr. Taheny: That is right.

The Court: I am asking your opinion on the quantum meruit basis.

Mr. Taheny: I might not have taken the case for 10 per cent, myself, but we attorneys sometimes will take a case on a low percentage if the value is high. They took this case knowing they would probably have to go to the court of final resort in view of the decision of the St. Marie case. [580] That

saved a trial at the start and managed to get their case going for a decision on the pleadings, which saved them quite a bit of trouble and expense.

As far as the evidence was concerned, that evidence was all laid out in that St. Marie case. All they had to do was to convince the court that the decision in the St. Marie case was wrong, the Supreme Court not having passed on that case because the petition was one day late, so even the petition had been filed in the St. Marie case. They had something to go on and to follow. The trial of this case, your Honor, only took two days and only three witnesses testified.

The Court: I understand.

Mr. Taheny: There was no contest at the trial.

The Court: I understand that there was a great deal of work done, I suppose.

Mr. Taheny: The work, I would say, was done by Mr. Clark, who in turn had the benefit of the work done by Mr. Sloan and others in the St. Marie case.

I am not taking any credit away from Mr. Clark. He built this case and put it through. He associated Mr. Preston after it had gone to the Circuit Court of Appeals, at which time it was very well crystalized. And then a brief was filed, just a take-off on the brief Mr. Clark had prepared. But unless Mr. Preston's name, alone, is to be given great value I can't see where he added anything substantially to the [581] case.

The Court: Did you ever try a case on a new trial after it had been reversed on appeal?

Mr. Taheny: Yes; I have tried cases as much as four times.

The Court: Where you had tried it, yourself, where some other lawyer tried it before?

Mr. Taheny: I have done both, yes. I don't like it.

The Court: It is arduous labor, isn't it?

Mr. Taheny: Yes; that is right. You will have a file at times maybe two feet thick. However, this case when Mr. Preston came in had not been tried, your Honor. It had gone through on a motion to dismiss and there was no trial, and therefore no great big transcript to start. He just had a little record, a rather small record, and the brief was a take-off on that brief in the Circuit Court of Appeals.

So I really say if you analyze this case, your Honor, and look into the facts, look at that transcript in the Circuit Court of Appeals, and compare those briefs, you will see that so far as the case in the Supreme Court of the United States is concerned it was just about the same case as you had in the Circuit Court of Appeals. There was a different court, looking on it differently; that is about all you can say.

Mr. Preston, at one point, said: "Well, how about our closing brief?" The Supreme Court closing brief was merely [582] a repetition of the opening brief. There was nothing I could see newly added in the Supreme Court brief. That is how I feel about it.

The Court: You have not told me yet what you

would add to the 10 per cent on account of Mr. Preston's services.

Mr. Taheny: I know that these men feel 10 per cent is enough for Mr. Sallee and Mr. Clark who started the case. I do not think that more than 12½ per cent should be given because of the association of the man who comes in at the late stage in the case, when it is ready to go to the Supreme Court, and files a brief just like the brief already filed. I can't see where those services are worth more than one-quarter of the services of the other two men. I can't see that. I can't see it.

I am assuming now, of course, it is worth 10 per cent. I have not answered your Honor's question what I would charge if I were in the case, because I have given no thought to that.

The Court: I did not ask you that question.

Mr. Taheny: It amounts to the same thing, in other words.

The Court: No. I asked you your opinion. You are a lawyer. You are arguing against a larger fee; so you must have some opinion, and I wanted the benefit of it if you cared to express it. [583]

Mr. Taheny: I have given no thought to that, for this reason: I know your Honor is going to be fair if you do decide to grant it on a quantum meruit, but I felt so convinced that the 1940 contract was controlling here, and I also felt it was not proper for me, as a lawyer in a case, not as a witness, to give an opinion on a matter of that kind, because you know opinions can be very, very different. We have opinions of the value of land:

\$211,000, \$100,000 and 1,000,000, on the other hand; and that is the way attorneys' opinions are, too.

I probably would not have taken the case on a 10 per cent contract, myself. That is all I can say, at the start, because it is against my policy to work for those percentages in any kind of a case. But Mr. Clark, in his wisdom, decided on 10 per cent after a careful study of the case beforehand.

Now, I want to say a few more words, if I may, on the 1940 contract. I did not mention all the points on it.

The Court: Are they different from those in your brief?

Mr. Taheny: There are one or two points that are not in the brief. I do not know how your Honor feels about this so-called point that was raised yesterday about the executed oral agreement. But it is the law in California that in order for a previous written contract to be abrogated or modified by an executed oral agreement, the oral agreement must be executed fully on both sides. [584]

Now, there is no evidence here that any oral agreement was executed by Mr. Arenas. Most of the cases cited in their brief are so-called rent cases, where a landlord will temporarily allow the rent to be reduced or will allow a rebate of rent.

One of the cases that I examined, I believe the Burdon case, was a case where the tenant went along for a few months paying the reduced rent, which was about half of the previous rent, then there was a suit for ejectment; and the whole point in that case was whether this oral agreement for the

reduction of rent had the effect of abrogating the lease. The court held that it had abrogated the lease only as respects the part that had been executed only as regards the two or three months during which the reduced rent had been paid and accepted.

The Court: Do you gentlemen want to come back tomorrow?

Mr. Clark: We would like to be heard, your Honor. This involves our own personal integrity, and it is a matter as to which I am unwilling to let this record stand without a reply.

Mr. Taheny: Your Honor, I said at the start that I am not stating that these gentlemen have deliberately said anything that is untrue. I do say that I am satisfied that they are mistaken in their testimony for the reasons I have given.

The Court: Would you like to come back tomorrow, [585] gentlemen?

Mr. Clark: I would, your Honor.

Mr. Taheny: I am just about finished, your Honor, myself.

The Court: You say you must be in San Diego tomorrow, Mr. Brett?

Mr. Brett: I will have to postpone it. I want to get through with this case.

Mr. Preston: Your Honor does not want to stay until 4:30, say?

Mr. Clark: I would rather take it tomorrow.

Mr. Preston: Your Honor has had a full day. It has been rather a hard day.

The Court: You reach a point of diminishing returns, Mr. Clark.

Mr. Brett: I can postpone my trip until Thursday.

The Court: Why not meet at 9:30, then?

Let us meet at 9:30 if that is agreeable, gentlemen. Recess the hearing until 9:30 tomorrow morning. Court will adjourn.

(Whereupon, an adjournment was taken until the following day, Wednesday, March 31, 1948, at 9:30 a.m.) [586]

[Endorsed]: Filed January 3, 1949.

[Title of District Court and Cause.]

Los Angeles, California

Wednesday, March 31, 1948, 2:00 p.m.

The Court: Gentlemen, your arguments have been most helpful to me. I did not think on Monday that by the time you were concluded I would feel clear enough on this matter to decide it, but I feel perfectly clear about it now and there is no occasion to write an opinion on it. If it goes to the upper courts they will take that privilege.

I am sure Mr. Brett agrees and would be the first to say that the Government of the United States can always afford to be fair with its citizens, and that includes attorneys as well as Indians and others. So anything I say which might imply criticism of any action or inaction on the part of the Secretary of the Interior—and I do not have any intention of saying anything at this time—but, if I do, it has no weight in this decision.

As I see the matter, in the first place, it calls for an interpretation of Section 345, Title 25 of the United States Code; and, as I read it in relation to this proceeding, by Section 345 the United States consents to the jurisdiction of this court in equity in a proceeding such as this.

I appreciate that the sovereign cannot be sued without its consent and that consent should be strictly construed. But once given that consent is to be liberally construed to effectuate the purpose. The considerations governing such [2] interpretation of sovereign consent are well discussed in the opinion of Mr. Justice Reed in the case of *United States vs. Shaw*, 309 U.S. 495, particularly at pages 500-502, possibly *et seq.*

This being an equitable action, then, as I interpret it, and the Government having consented to the invocation of the equity jurisdiction of this court, I want to consider at the outset the scope of that jurisdiction.

Equity jurisdiction, as conferred by the Constitution on the Federal Courts, imposes the duty to adjudicate according to equitable rules and principles recognized by the Court of Chancery in England at the time our Constitution was formed. The Supreme Court discusses that in numerous cases. One of the recent cases is *Atlas Insurance Co. vs. W. I. Southern, Inc.*, 306 U.S. 563, at 568.

No such broad jurisdiction is conferred on Federal Courts in actions at law. But here we are dealing, as I say, with a suit in equity and with a proceeding in that suit in the nature of a supplemental

bill for the taxation of costs as between solicitor and client.

As I have said earlier in this proceeding, that power, time-honored and inherent power, of courts of equity or courts of chancery at the time of the adoption of our Constitution and prior to that, is discussed in the scholarly opinion of Mr. Justice Frankfurter in *Sprague vs. Ticonic Bank*, 307 U.S., [3] particularly at pages 164 et seq.

Of course, this is not a *Ticonic Bank* case. This is a case involving what I would construe to be a fund (i.e., the land represented in the allotment) an interest in it. And Lee Arenas' interest is akin to the interest Barnett had in the fund in *U. S. vs. Equitable Trust Co.*, 283 U. S. 378. In my view the same considerations that prompted the court there, as a court of equity, to assess fees as between solicitor and client, apply here.

The only distinction of any consequence between the problem at bar, as I see it, and the problem in the *Equitable Trust Company* case is the basis of the court's jurisdiction or power to bind the United States. In the *Equitable Trust* case, as has been argued, there was no statute under which the United States had consented to be sued in such an action as that action by Barnett, the Indian, through his next friend, against the *Equitable Trust Company*, and more particularly against the *American Baptist Home Mission Society*. The United States intervened, and consent there was, as Mr. Brett has pointed out, construed to arise, as it did, in such cases as *The Siren*, 7 Wall. 152, and *U. S. vs. The*

Thekla, 266 U. S. 328, and others which are cited in 283 U. S. at page 746. There are later cases to the same effect, that where the United States itself invokes the jurisdiction of the court, it to that extent consents in an equitable proceeding [4] that complete justice be done as is the custom. Of course equity, having taken jurisdiction for one purpose, will retain that jurisdiction to do complete justice between the parties.

So I find there is, for those reasons, jurisdiction under 25 U.S.C. Sec. 345 to bind not only Lee Arenas but the United States, as a party to the main action in this proceeding, by whatever determination this court makes in the nature of an award between solicitor and client.

I mentioned the considerations prompting the award in the Equitable Trust Company case. They are also involved in U. S. vs. Anglin & Stevenson, et al., 145 Fed. (2d) 622, a Tenth Circuit case decided in 1944. So that brings us to the question of what costs and what fees should be assessed as between solicitor and client in this case.

Before I proceed, I want to say again that in determining this action under Section 345 of Title 25 to be an equitable proceeding, I am relying in part upon the decision by Mr. Justice Jackson in Arenas vs. United States, 322 U. S. 419, at page 430, and the cases cited there, that case I mentioned yesterday, I believe, namely, Hy-Yu-Tse-Mil-Kin vs. Smith, 194 U. S. 401; and U. S. vs. Payne, 264 U. S. 446. I believe there are other decisions where the point was not expressly raised, in which the very

nature of the action and the relief granted demonstrated that the equitable powers [5] of the court were invoked in a proceeding under Section 345.

So, now the question of what costs should be assessed. If there is a contract between the solicitor and the client that fixes an actual recovery or fixes the rate of recovery, of course, the court will take that contract as governing the maximum amount as long as the amount appears to be fair and equitable. If it were an inequitable contract, a court of equity would not consider itself bound to heed an arrangement, even between the parties, which is inequitable as to amount.

It seems to me that under Section 85 of Title 25 this contract of November 20, 1940, not having been made with the consent of the United States, is void. I believe the Assistant Commissioner had the same idea in mind, although he does not say so, in the letter which was introduced in evidence here from the Assistant Commissioner to Mr. Sallee declining to take any action on the contract. As I see it, the contract clearly deals with, or, in the language of Section 85, Title 25, relates to tribal property in the hands of the United States, or did at the time it was made. However that may be, even were it not for that consideration, the 1940 contract was made subject to the express approval of the Commissioner of Indian Affairs and the Secretary of the Interior. In view of their refusal to have anything to do with it, it is very difficult to know how that contract could [6] ever have been enforced or ever have been carried out.

If it were not for the subsequent conduct of the parties, I would be prepared to say that the contract being made subject to that condition, and that condition never having come to pass, the contract never came into effect. But, as has been pointed out in argument by Mr. Brett, I believe, or Mr. Taheny, these conditions were for the benefit of the parties and the parties treated the contract as being in effect. The petitioners here allege it was in effect up to the time in 1945 when it was superseded, and the other party to the contract, Lee Arenas, contends it is still in effect. So the parties have obviously waived the performance of these conditions.

Even if that were not so, it would seem to me that Mr. Sallee, and Mr. Clark who was with him in all these matters, would be estopped now to assert that their services were worth more than the ten per cent or one-tenth specified in the contract. They placed that valuation upon their services at the time. And there is no showing here that they, having obligated themselves to render those services (assuming the validity of the contract now), ever gave any consideration for a modification.

Without going into a discussion of those attorney fee cases in California, and getting to the point of whether or not the contract was superseded, I say it seems to me it was [7] void in the first instance under Section 85, but the result would be the same in this case, because I am not here to enforce the contract; I am here to take a measure and find an equitable compensation and an equitable taxation of fees between solicitor and client, and this contract

is merely one bit of evidence to aid me in determining what is fair and equitable between the parties.

So I find that petitioners David D. Sallee and Oliver O. Clark are estopped to claim any greater fee than ten per cent of the value of the lands embraced in the allotment to Lee Arenas.

The petitioner, John W. Preston, is not in that position. I feel that Mr. Brett made an accurate analysis of that situation. Petitioner Preston was in no way bound by the 1940 contract, assuming it was in force. If it was in force, then petitioners Clark and Sallee were obligated to perform the services without increased remuneration, and the attempt in the 1945 contract to increase that remuneration to them for the same services was ineffective.

Not so as to Petitioner Preston. His employment was on a quantum meruit basis and his services were rendered on a quantum meruit basis, and I find that he is entitled to 12½ per cent of the value of the lands involved in the allotment as reasonable compensation for his services, and to reimbursement to the extent of \$258.67 by reason of out-of-pocket costs advanced on behalf of Lee Arenas in the performance of [8] his services.

Accordingly I declare a lien upon the allotment and upon all rights conferred by the allotment, and upon the entire interest of Lee Arenas and his heirs in the land embraced within the allotment in the hands of the United States, and upon the rents, issues, profits and income derived from all or any part of the lands embraced within the allotment,

and the proceeds of any land embraced within the allotment in the hands of the United States and, as well, in the hands of Lee Arenas and his heirs, to the extent of an undivided one-tenth interest as to petitioners Oliver O. Clark and David D. Sallee jointly in their favor, and to the extent of an undivided one-eighth interest in favor of petitioner John W. Preston.

Mr. Brett: Would your Honor permit an interruption merely for correction?

The Court: Yes.

Mr. Brett: I think you have overlooked the costs, and I think that lien of Judge Preston's would run for his costs, one-eighth plus his costs, as stated.

The Court: Yes. Thank you. I mentioned that previously but I had omitted it in impressing the lien.

And a further lien in his favor to the extent of the personal advance of \$258.67 by Petitioner Preston. At the time you interrupted I was thinking of the costs of this [9] proceeding.

I find it would be equitable to permit both parties to bear the cost of these proceedings.

The court hereby retains such jurisdiction as may be necessary to enable the court to act upon and determine the time when, and the manner in which, and the method whereby payment of all or any part of the compensation and reimbursement for expenses hereby awarded shall be made or further secured.

In that connection I hope it will not be necessary

to go to that expense, but I will entertain an application for the appointment of a receiver.

Mr. Preston: I do not know as I understood your Honor fully as to the extent of the lien.

The Court: I have declared a lien upon the allotment, upon all rights conferred by the allotment, upon all the lands embraced within the allotment, upon the entire interest in the land in the hands of the United States, and upon all the rents, issues, profits, income and proceeds derived from the land in the hands of the United States.

In other words, it is my view that the court, having jurisdiction under 25 U.S.C. Sec. 345 to render the relief in the main action, has jurisdiction to affect that land, and that the United States has consented to the exercise of full equitable jurisdiction in this action. That is my view of it. [10]

[Endorsed]: Filed April 7, 1948.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT

Los Angeles, California

Wednesday, February 7, 1951, 10:00 a.m.

(Further hearing on petition for attorneys' fees.)

The Court: Are you ready to proceed, gentlemen?

Mr. Preston: May it please the Court, I think a word of explanation or by way of introduction might be profitable.

This is a re-examination in a proceeding that was heard in this court in the months of February and March, 1948. At that time the Court gave an extended hearing to the matter covering several days. A judgment was rendered in that case from which an appeal was taken by the Government and by Lee Arenas, and the matter was affirmed in part and remanded for further consideration on one issue.

So the petitioners, Oliver Clark, David Sallee, and myself, stand before your Honor asking that the mandate of the court be carried out by the fixation of the amount in dollars that is due us as attorneys in this proceeding, in this case 1321, and that a lien be impressed upon the property involved for the amount so determined.

The order of the mandate and the order of the Court of Appeals apparently requires one step further, your Honor, not merely a fixation of the amount of attorneys' fees in cash, but a fixation of the value of the Indian's interest in the property involved.

The reading of the opinion in that respect is this: [2]

“The District Court should have proceeded expressly to fix the dollar value of the services performed as a basis for the sum secured by the lien, and in so doing should have considered and determined the value of the thing secured by the litigation, namely, the reasonable value of the Indian's interest in the allotted land under the trust patent, as one of the elements to be taken into consideration.”

We have had a similar proceeding before another Federal Judge, Judge Cavanah.

The Court: I have read Judge Cavanah's opinion on it this morning. A copy came to my desk some way. I do not know how I received it.

Mr. Brett: Judge Cavanah directed, your Honor, that a copy be handed to you.

The Court: Very well.

Mr. Preston: And anyway, he undertook to find and did find the value of the allotment, as well as the value of attorneys' fees.

The Court: Do you gentlemen feel that Judge Cavanah properly complied with the mandate?

Mr. Brett: Unfortunately, the Government would have to answer, "No," your Honor.

The Court: Is that because of the valuations or the amounts? [3]

Mr. Brett: In applying the mandate, we feel that he erred in that it is quite apparent from his opinion that in valuing the land, he evaluated it as fee simple, as distinguished from valuing the Indian's interest.

Mr. Preston: It is our contention that that is the only criterion, your Honor.

Now that we have recited these matters by way of introduction, it is then agreed between counsel for the Government and, I would assume, for Mr. Lee Arenas as well, that the record, the reporter's transcript in the proceeding taken three years ago, may be considered as given before the Court today; is that correct?

Mr. Brett: That is correct, yes, sir.

Mr. Ennis: It is agreeable, your Honor.

The Court: In other words, that the reporter's transcripts, all exhibits, all records and files in this case are before the Court for this hearing the same as if they had been reintroduced. Is that the understanding?

Mr. Ennis: That is correct.

Mr. Brett: We are so stipulating.

The Court: Very well.

Mr. Preston: On that record, your Honor, we rest our case in chief, with the privilege accorded us of furnishing the Court an original and supplemental brief that I have prepared or caused to be prepared in this case which handle [4] the issues. Before the hearing date I served a copy of the original memorandum on the Government, and the supplemental memorandum was served yesterday. And I would like to have the privilege of passing an original and a copy of each to the Court in this matter.

The Court: You may hand them to the Clerk.

Mr. Ennis: May I ask Judge Preston if he has a copy for me, your Honor?

Mr. Preston: I will procure you a copy. It is at the office. I do not believe I have it with me. The supplemental memorandum may be considered as our reply to the Government's memorandum, which has also been filed, I assume.

The Court: By the "Government's memorandum," you are referring to Memorandum of Plaintiff and Respondent Lee Arenas and Respondent United States of America in re Hearing to Fix

Attorneys' Fees, etc., filed February 5, 1951?

Mr. Preston: Yes, your Honor. And with that showing insofar as we are concerned, we rest in chief, your Honor.

Mr. Brett: Your Honor, I am going to address you here a few moments before I commence the testimony. I wonder if you could have your bailiff bring the exhibits here, because the primary thing I wanted to do is to examine the witness Gallagher in reference to his report, and I think that that report should be here so that your Honor can [5] follow the examination. If the bailiff could get that record.

The Court: Do you have the exhibits, Mr. Clerk?

The Clerk: No. I have only the last volume of the record here.

The Court: How much time do you expect to take with this testimony?

Mr. Brett: I am not always able to estimate too clearly, but I think half an hour will be probably all I shall take, or less.

The Court: Very well, Mr. Clerk, will you get the exhibits requested by counsel?

Mr. Brett: Now, if your Honor please, first addressing myself to the matters that Judge Preston stated——

The Clerk: May I inquire, Mr. Brett, as to which exhibits?

Mr. Brett: It is the exhibits in the Lee Arenas case 1321-O'C., consisting of appraisal reports, particularly the appraisal report of Joseph Gallagher, but there are other appraisal reports.

I trust your Honor will pardon me if I cough. I still have a little impairment.

In connection with this legal issue which Judge Cavanah has resolved and which your Honor will have to resolve, I believe that we have treated that in the memoranda and I [6] do not want to take any additional time to argue the point.

My purpose will be this, your Honor: I have Mr. Jones here and I expect to interrogate him on the value of the Indian's interest with a hypothetical question on one of two bases. If Judge Preston objects to that and your Honor rules against the Government that it is not admissible, then I would like to adduce it as an offer of proof so I will have the record.

The Court: You wish to make a record of excluded evidence, if it is excluded, is that it?

Mr. Brett: Yes. If, on the other hand, you permit it in, it will be in as evidence.

Other than that, I do not care at this time to trespass on the time of the Court in arguing the issue, because I think it has been briefed quite thoroughly by both sides.

I do feel, however, that before I examine any witness there are a couple of matters that I should offer.

First, Judge Preston has executed a stipulation with me. I must confess that, like Judge Preston and certainly not with any personal intent of doing so, we both ignored the fact that Mr. Ennis was in this case. So, may I just show this to Mr. Ennis a minute? Frankly, I forgot all about it.

Mr. Preston: I have not shown that stipulation to my [7] associates, either.

Mr. Brett: We forgot all about that, your Honor.

Mr. Clark: I am in the same class. I did not see it, either, your Honor.

Mr. Brett: I want to apologize for this delay, but, frankly, I forgot it.

Mr. Ennis: I have no objection to it, your Honor.

The Court: Very well.

Mr. Brett: I have here a signed stipulation, your Honor, between the Government, as representing the United States, and the plaintiff, Lee Arenas, and Judge Preston for the various petitioners, which I should like to file, an original and a court's copy. Shall I hand it up to the Court?

The Court: Just leave it for the Clerk.

Mr. Brett: I will say, very briefly, that the whole extent of it is this: that, for the purpose of this hearing only, the parties have stipulated that each of the properties which are the subject matter of this litigation, the properties which are trust-patented in severalty, are surrounded in part or in whole, as the stipulation recites, by other properties which are likewise trust-patented but to other Indians than Lee Arenas. And there is the reservation in it to protect all rights in connection with this other case which is later coming before your Honor; that [8] this stipulation is for the purpose of this hearing only, and does not in any way prevent the petitioners or anyone whom they may represent, now or hereafter, from urging in other litigation that such trust patents are invalid. In

other words, we are merely stipulating for the purpose of this hearing.

The Court: In other words, the effect of the stipulation would be the same as the effect of an admission made pursuant to Rule 37(b)?

Mr. Brett: That is right, yes, sir.

Next, your Honor, and just for clarification, as I understand it, what we agreed to a few minutes ago was that the reporter's transcript and all exhibits heretofore offered are in evidence.

The reason that I state that is that I noted for the first time yesterday on reading the printed transcript on appeal that apparently Mr. Jones' report and the joint report of Mr. Jones and Mr. Evans were omitted from the transcript.

However, I understand for the purpose of this hearing it is to be considered as a part of the evidence in this case.

The Court: Actually, I assume that the effect of the mandate is to open the findings and the judgment, and direct this Court to continue as if the other hearing had never been interrupted. [9]

Mr. Brett: I think that would be a proper interpretation.

The Court: But out of an abundance of precaution we make these stipulations so the record will be abundantly clear that everything that was in before is re-introduced now for the purpose of this hearing and is in evidence.

Mr. Brett: Yes, sir.

Then, your Honor, as Judge Preston has informed you and as you are informed by the opinion

of Judge Cavanah in the companion case 6221-P.H., we had testimony, and in that case the witness whom I am to cross examine, Mr. Joseph A. Gallagher, Sr., testified at some length as to the methods which were pursued by him in appraising the property, and testified in that case that those were the methods that he pursued in this case.

So, to save time, we have stipulated—and again, I have not asked Mr. Ennis and I am asking his consent on that—that those portions of the transcript of the direct and cross examination and the redirect examination of Mr. Gallagher before Judge Cavanah which recite the methods that he pursued, his qualifications, and other matters as pertinent in this case as well as in that case, but deleting therefrom those portions which they direct to the Della Nicholson or the Eleuteria Brown Arenas case, may be considered as having been given in this case. [10]

I prepared excerpts and submitted them to Judge Preston, and to save time, then, we desire to file those excerpts of that testimony as part of his examination in this case, in addition to the previous testimony in this case.

That is correct, is it not, Judge Preston?

Mr. Preston: No objection particularly.

Mr. Brett: I believe that your Honor will recall——

The Court: Is it stipulated, gentlemen, that this transcript now offered may be received?

Mr. Brett: So stipulated.

The Court: Partial transcript, or a transcript of

the partial testimony of the witness Gallagher in the 6221 case.

Mr. Brett: 6221-P.H. case.

Mr. Preston: I stipulated on the theory it would shorten the cross examination of Mr. Gallagher, maybe, is the reason I did it. I do not know of any value otherwise.

Mr. Ennis: Your Honor, I think the occasions on which I have stipulated to something I have not read or heard are very, very rare. However, I assume that Mr. Gallagher, who took an oath in the other proceeding, told the truth and the whole truth, will tell the same story from this witness stand before your Honor. So I think I am safe, but I will not prejudice my client's rights. I will stipulate that transcripts of his sworn testimony may be introduced [11] here.

The Court: And may be considered the same as if the same questions had been asked him in this proceeding and he had given the same answers.

Mr. Ennis: Yes, I will stipulate to that, because I have observed Mr. Brett, counsel for the Government, cross examine. I imagine he was rather thorough in that cross examination.

The Court: I understand that to be the stipulation, then, of the parties.

Mr. Brett: That is the stipulation, yes.

Mr. Preston: I will say for the benefit of Mr. Ennis that was the shortest cross examination Mr. Brett ever put up in his life.

Mr. Ennis: Unusual.

The Court: I think we had probably better mark

the stipulation being offered this morning as the Government's next exhibit. Do you have a record of the exhibit numbers?

Mr. Brett: I do not, your Honor. I tried to find them a while ago, but there are too many entries on 1321. I do not know what it is. Should we call it "A-1" for the purpose of this proceeding?

Mr. Preston: Call it the second series.

The Court: Yes.

Mr. Brett: Or "AA"? [12]

Mr. Preston: Second series.

The Court: There may be an exhibit.

Mr. Brett: No, we did not go that far. I am sure we did not have any double letters or double numbers.

The Court: Mr. Clerk, do you have a record of the last exhibit received in the former hearing upon these petitions for attorneys' fees?

The Clerk: My record would indicate "N" would be the next number, your Honor.

The Court: "N"?

The Clerk: "N".

The Court: Very well, let the transcript be marked Respondents' Exhibit N in evidence—the stipulation, rather. The transcript will be Respondents' Exhibit O in evidence.

(The documents last referred to were received in evidence and marked Respondents' Exhibits N and O.)

[Printers's Note: Exhibits N and O are set out at pages 627 to 652 of this printed record.]

The Court: Now are you ready to proceed, Mr. Brett?

Mr. Brett: I will be in just one minute, your Honor. I have two other things.

I have heretofore given Judge Preston copies and I have just delivered copies to Mr. Ennis and then I gave you the original, didn't I, Mr. Ennis?

One, your Honor, is a copy of Public Law 322 of the 81st Congress affecting the Palm Springs Reservation, approved October 5, 1949, requires your Honor can take [13] judicial notice, but I think for the record it would be well to put the copy of the Act in as our next exhibit.

The Court: Is there objection to the offer?

Mr. Ennis: No objection on my part.

Mr. Preston: No objection.

The Court: Received into evidence as Respondents' Exhibit P.

(The document last referred to was received in evidence and marked Respondents' Exhibit P.)

[Printer's Note: Respondents' Exhibit P is set out at page 652 of this printed record]

Mr. Brett: Second, your Honor, is Public Law 904 of the 81st Congress, Second Session, approved December 29, 1950, which I offer, then, as Exhibit Q. Would that be correct?

The Clerk: Right.

The Court: Is there objection?

Mr. Ennis: No objection.

The Court: Received and will be so marked.

(The documents last referred to was received in evidence and marked Respondents' Exhibit Q.)

[Printer's Note: Respondents' Exhibit Q is set out at page 654 of this printed record.]

Mr. Brett: With those preliminaries, I would like to have the privilege of calling to the witness stand for further cross examination the witness Joseph Gallagher, Sr.

I might say, your Honor, to recall your attention to this matter, because I realize you have had many matters since then, you will recall that when we started to cross [14] examine Mr. Gallagher at that time you pointed out, or your then ruling was that you were going to consider a percentage of the land, and it was therefore not necessary to go into detail and state the value of the land per se. For that reason I desisted from any cross examination on that matter, but had the right reserved if that became necessary.

The Court: Yes, I recall it.

Mr. Brett: Will you take the stand, Mr. Gallagher?

The Court: With all deference to the Court of Appeals, I still think that you should not have to go ahead with the examination, and I still think that the Court should not be called upon to attempt to place these matters in dollars and cents.

Mr. Brett: That was the opinion of Judge Cavanah, and I do not believe, your Honor, it is proper for me to express my opinion.

JOSEPH A. GALLAGHER,

a witness on behalf of Petitioners, having been previously duly sworn, was recalled and testified as follows:

Further Cross Examination

By Mr. Brett:

Q. Mr. Gallagher, you will recall that you made an appraisal report in writing which has been received in [15] evidence in this case?

A. I do.

Q. And you will also recall that you testified in connection with the Della Brown case before Judge Cavanah this last November? A. Yes, sir.

Q. You understand portions of that testimony have been received here as if restated on the stand today by you? A. Yes, sir.

Q. And I believe you have just had an opportunity of reviewing that testimony, the record of it?

A. The Brown testimony, Mr. Brett?

Mr. Brett: Yes.

Mr. Preston: I do not think he did.

A. No, I did not.

Q. (By Mr. Brett): Mr. Gallagher, in making this report, you recited at the outset that you were doing it for the purpose of an attorney's fee. Did that have any bearing upon the result which you reported?

A. None whatsoever, Mr. Brett, and it is possible that I might have misused the word "determine," the verb "determine." Maybe I should have said "assisted."

Q. You have stated also, on page 3 of the re-

(Testimony of Joseph A. Gallagher.)

port, that the report is in part predicated upon opinions, data, and computations furnished by others whom you deem to be [16] responsible, etc. Did you have a group working under you to obtain this data?

A. I had my son, Mr. Brett, who worked with me at that time. The two of us worked together, and I believe for—oh, maybe two or three days I had my son-in-law, who is in my company as a partner of mine.

Q. After the data was assembled, did you personally check it?

A. Did I check the data on all these properties that I had indicated in the report?

Q. Yes. A. I did not——

Q. Did you personally verify them?

A. I did not check individual properties. I assumed when they came in with their report to the book in the assessor's office there with them, I talked to the assessor. So I will say that I verified those in the assessor's office. Most of the others I believe I did verify.

Q. Did you inspect any of the properties personally?

A. Not all those properties. I did some of the properties, yes.

Q. Will you be able when I ask you, to briefly state which ones you did or did not examine?

A. I shall try.

Q. You have reported in the report that you had [17] knowledge of the fact that the lands which

(Testimony of Joseph A. Gallagher.)

are here involved were subject to trust patents.

A. Yes, sir.

Q. In reporting value here, were you reporting it as the value of a fee simple?

A. That is correct, Mr. Brett. I understand——

Q. That answers my question. And you also report in your report that you had knowledge of the zoning regulations?

A. Yes, sir.

Q. You were informed that those zoning regulations, by Congressional act, were made applicable to the Palm Springs Reservation?

The Witness: Would you repeat the question, please?

Mr. Brett: Will you do so, please, Mr. Reporter?

(Question read by the reporter.)

The Witness: I do not quite understand that.

Mr. Brett: I will ask it another way.

Q. In arriving at your report, did you arrive at it on the theory and with the understanding that these properties were subject to the zoning regulations of the City of Palm Springs?

A. I gave careful consideration to the fact that they were zoned the way the zoning maps indicate the properties to be zoned. [18]

Q. And your answer is, then, that you value them, being subject to those zoning regulations?

A. That was one of my considerations in evaluating the properties. It was not the sole consideration.

Mr. Brett: Mr. Gallagher, I do not believe that

(Testimony of Joseph A. Gallagher.)

is quite an answer to my question. Would you read it, Mr. Reporter?

(Question and answer read by the reporter.)

Mr. Preston: I think that answers it.

Q. (By Mr. Brett): Mr. Gallagher, if you can, I would like a direct answer on this. In fixing your valuations, did you assume that these particular properties were at that time, that is, the time of your evaluation, subject to the zoning regulations which are recited in your report?

A. It is hard for me to answer "Yes" to that, Mr. Brett, for this reason: In the acreage in Section 14 it carries an R-1-A zoning, which is single-family residence, with an area of 7,500 square feet. Now, there are some churches in there, and it looks as though the zoning was broken, the zoning law was broken, the fact that there are churches, unless there was a zoning variance allowing those churches. I did really give very careful consideration to all zoning angles and zoning conditions.

Q. Well, let me ask another preliminary question. In giving this value, you were making certain assumptions, [19] because you were given a hypothetical consideration or situation and arriving at a conclusion based upon that hypothetical situation; isn't that right?

A. Yes, sir.

Q. All I want to know is, in connection with this value of a million-plus which you gave to this property, did you as part of your assumptions assume that these particular lands were subject to the

(Testimony of Joseph A. Gallagher.)

zoning regulations which you report and which are the regulations of the City of Palm Springs, or did you assume that they were not?

A. They were a part.

Q. On page 7 of your report, and also on page 12 of your report, you refer to the utility of these properties for commercial income. What did you have in mind when you used the term "commercial income"?

A. The highest and best use of the property would, in my opinion, entitle the property to commercial income.

Q. By that did you mean business?

A. Yes, under highest and best use, Mr. Brett. I just can't see business on Indian Avenue, in a large area like that. I can see where we will have business in other parts of Section 14, exclusive of Indian Avenue. That was a consideration that I gave, it is true.

Q. Let us put it this way: that in arriving at your conclusion, is the Court and am I to understand that you [20] assumed that at the date of your valuation the properties which are the subject matter of this particular case could have been used and developed for business purposes?

A. Under zoning, no. Under highest and best use, yes.

Q. Well, let us put it this way: Did you in fixing your value assume that the property was then available for use for business purposes?

Mr. Preston: Just a minute. To which we object

(Testimony of Joseph A. Gallagher.)

on the ground it has already been answered, and the further observation, your Honor, that it is not what it is being used for at that time, but it is what its susceptible use is.

Mr. Brett: Your Honor, I have asked the question specifically——

Mr. Preston: What he has in mind as future use——

Mr. Brett: I have asked the question specifically whether he considered it was then available. That is the California rule, if your Honor wants it.

The Court: I have it, whether he considered that a use would then be available.

Mr. Brett: That is right; that was my question.

The Court: Overruled.

The Witness: May I have the question again, please?

The Court: Do you wish it read or do you wish to reframe it? [21]

Mr. Brett: Well, I will reframe it.

Q. My question is this, Mr. Gallagher: In arriving at your opinion of a million-plus dollars as to the property here under consideration, did you assume that the property or any part of it was available—by that I mean could then be used—for business purposes?

A. I did not. Now, may I ask Mr. Brett where on page 7 or page 12, what paragraph you are referring to?

Q. I was referring to the paragraph where you say: "Several large tracts of land have been sub-

(Testimony of Joseph A. Gallagher.)

divided into commercial income and residential developments.” And on page 9—

The Witness: What page is that on, please?

Mr. Brett: That is on page 7.

The Witness: On page 7.

Mr. Brett: And on page 12.

The Witness: Just a moment, please. Where on page 7 did I say that?

Mr. Brett: All right. It says:

“The above facts are furnished for the purpose of establishing substantial and continuing activity in the area where subject property is located. The district is progressing and expanding. Several large tracts of land have been subdivided into commercial income and residential developments. The tracts [22] are close to property under appraisalment;”

You say, “Under the heading, ‘Supporting Data,’ these subdivisions are referred to,” etc.

Then on page 12 you state that:

“The value of land in resort communities depends upon the more intensive use of land as the city grows. Cities satisfy demand for space by either ‘going up’ or by ‘going out.’ They are high at the center and low at the circumference.

“It is unquestionable that the highest, best and most profitable use to which property under appraisalment can be dedicated is that use which caters to public and community needs.”

Q. That “which caters to public and community needs” would be business purposes, would it not?

A. No. I think you are putting the word “busi-

(Testimony of Joseph A. Gallagher.)

ness'' into my report. From what you read I do not find it at all.

Q. What do you mean when you use the term "public and community needs"?

A. "Public and community needs" might be a development into some units of multiple type or whatever the community would most require in some type of a development, just like in Truesdale's development, the community almost required that development that Truesdale put in there.

Q. All right. Now, let us just take that a [23] minute. I do not want to take too much time. What did you mean when you used the term—it escapes me now. I will withdraw it. Let us forget it. Did you assume that these properties were available at the date of your evaluation for multiple unit development?

Mr. Preston: I think it is already covered. I object to it on the ground it is already covered.

The Court: In the previous examination, you say, that subject was covered previously?

Mr. Preston: I thought so. I do not know, but I thought so.

Mr. Brett: I do not think so, your Honor. I think his last answer makes that proper. I wanted to frame it in his exact language. Maybe I had better have it read. It was not long.

The Court: As I understand the witness' opinion—and my memory may be faulty—but, as I understood, his opinion was predicated upon the assumption that the property would be free from the

(Testimony of Joseph A. Gallagher.)

restrictions imposed by law upon Indian ownership.

Is that correct, Mr. Gallagher?

The Witness: That is correct, your Honor.

The Court: That applies to all the restrictions imposed by Indian ownership, does it not?

The Witness: Yes, sir.

Q. (By Mr. Brett): Do you mean aside from the zoning [24] laws?

The Court: I am speaking of the restrictions imposed merely by reason of Indian ownership.

Mr. Brett: I am only addressing myself now, your Honor, in this examination to the restrictions imposed by the zoning laws. I want to find out whether he assumed that any part of these lands may be used for multiple units under the zoning laws.

The Court: Hadn't we covered that about the zoning? I have a recollection Mr. Gallagher testified that he did consider all the zoning laws of Palm Springs in effect as applicable.

Mr. Brett: That is correct, too, all the lands, for the purposes of his opinion.

The Court: Because, if they came out from under the Indian restrictions, they would be subject to the same restrictions that any other land would be subject to.

Am I correct, Mr. Gallagher?

The Witness: You are, your Honor.

Mr. Brett: That is entirely correct, your Honor. But in connection with that, I want to find out if it is not a fact that he has assumed in connection with

(Testimony of Joseph A. Gallagher.)

these properties under the zoning law, assuming you or I owned them, that they could be used for a multiple residence purpose.

The Court: You may answer that question. [25]

A. Under the highest and best use, yes. Under the zoning requirements, no.

Now, may I explain that, Mr. Brett? Zoning ordinances are not serious ordinances in communities. They are placed on districts as protective measures, that is true. But then conditions happen where people may want a church in there, they may want a school in an R-1 district. So that there necessarily will become a zone variance. We have that all over, not only Los Angeles County, but other counties, too.

The Court: You assumed, then, did you, Mr. Gallagher, is it fair to say, that the authorities would make such variances as might be necessary to permit the highest and best use of the land?

The Witness: I did, your Honor. I did.

Q. (By Mr. Brett): Mr. Gallagher, in your experience as an appraiser haven't you learned that environment to the land is an important factor?

A. I have.

Q. You inspected these particular properties, did you not? A. I did.

Q. Did you not as a part of that inspection learn, and have you not reported in your report, that this area in Section 14 which you valued at \$20,000 an acre—[26] that is these two lots—were surrounded by the same type of slum dwellings and

(Testimony of Joseph A. Gallagher.)

low-class improvements that these particular properties were used for?

A. If those dwellings were not there, Mr. Brett, in my opinion the per acre value would be much in excess of \$20,000 per acre. Because I am working in the slum housing projects in Los Angeles now, and it is surprising what the appraised valuations on some of those properties are, even though the environment is very, very poor.

Mr. Brett: I move to strike that as not responsive to my question. I would like to have an answer to the question.

The Court: Did not the witness answer the question?

Mr. Preston: I think he did.

Mr. Brett: I do not think so, your Honor.

The Court: The motion is denied.

Mr. Preston: It is implied in his answer.

Mr. Clark: He answered it directly.

Q. (By Mr. Brett): Now, Mr. Gallagher, there is a reference in your report on page 8 which states that: "The improvements are very poor" on Section 14, "and lend themselves to a detrimental influence upon neighboring properties. They are classed as shacks and assume the appearance of a slum district. The streets are unimproved; sanitation facilities are faulty; the type of people belong [27] to another district. They fall below the income group and social status of people of the neighborhood."

And thereafter you gave certain ratings in which

(Testimony of Joseph A. Gallagher.)

you arrive at a total rating of physical structures of 22 points. What did you have reference to? I mean what was the "22" in reference to? Was it in reference to some one hundred per cent?

A. In reference to one hundred per cent. Now, you will remember that I appraised the land and I indicated in my report that my assignment for appraisal of the properties was for the land only, not for the improvements. I did not appraise those improvements. I examined the improvements. I did not go inside. It is not necessary for an appraiser at times to go inside. He can pretty well tell by looking at the structural conditions that they were not in conformity with the improvements in the other sections surrounding 14 by any means at all.

So that, using 100 as my index, if the improvements were standard and the improvements had been well taken care of and, say, they were fifteen years old, I would not take the standard depreciation figure of two per cent a year for the first ten and 1.775 the next five years, thus depreciating 15 per cent a 10-year building. Maybe I would depreciate that building only 7 or 8 per cent by reason of the care. But I found those buildings in very, very poor shape, and it [28] was just something which was considered by the appraiser in appraising the property.

Q. Do I understand your testimony is that the lands that immediately surround these two properties that are in Section 14 that are here under

(Testimony of Joseph A. Gallagher.)

consideration were not improved and used in the same manner as those particular lands?

A. You mean lands adjacent and surrounding 46 and 47 and Section 14?

Q. No. My question is this: You are referring now, or I am referring now to the two lots in Section 14 that were allotted Lee Arenas.

A. Yes, sir.

Q. Is it your testimony that the lands which immediately surround it were not both used and improved in the same manner as the Lee Arenas lots?

A. My testimony is not that, Mr. Brett.

Q. What is your testimony in that respect?

A. I referred to, when I spoke about the standard and conventional and proper developments, the developments I found in Sections 11 and 15—Section 11, which is immediately north of 14, and Section 15, which is immediately west of 14. I was not referring to the improvements in Section 14. They conform with the improvements that I found on Lots 46 and 47. They do not belong in Section 14, [29] in my opinion. They should be removed.

Q. Did you value these two lots in Section 14, assuming that they would be changed, or, rather, that they had been changed so that they were similar to the lots in Section 15, which is the central part of Palm Springs?

A. Under the highest and best use, Mr. Brett, lots in Section 14 are susceptible, in my opinion, to

(Testimony of Joseph A. Gallagher.)

the same type of development as you find in Section 11 and also in Section 15 and Section 23.

Mr. Brett: Will you read the question, Mr. Reporter?

I think, your Honor, that question can be answered yes or no and then he can add, if he desires.

Mr. Preston: He answered it.

The Court: I am not familiar with the section numbers, those section numbers 11, etc., mentioned by the witness. Aren't they the business center of Palm Springs?

Mr. Brett: 15 is the very center, the heart of the business district of Palm Springs.

The Court: Then hasn't he answered your question?

Mr. Brett: I do not think so. I want him to tell me——

The Court: I understood his answer was, in effect, "Yes." That is the way I understand it.

Mr. Brett: Well, if your Honor understands it.

The Court: Is that a fair statement?

The Witness: Yes, it is, your Honor. [30]

Mr. Brett: All right, with that answer I am satisfied.

Q. Mr. Gallagher, if you will turn to page 14? On page 14 you state that in arriving at your opinion you gave no consideration "to the so-called 'potential value'—set up by promoters and others who employ hypothetical improvements and rental returns."

Do I correctly interpret that statement to mean

(Testimony of Joseph A. Gallagher.)

that you gave no consideration to the value of the property except that which existed at that particular time? A. No, Mr. Brett.

Q. What do you mean?

A. When I use the word "speculative," I use that advisedly. Promoters who would step into Section 14—that is a promoter, not a good, honest, substantial subdivider—a promoter might step in there and have ideas that the returns will be fantastical returns, anything of a conjectural nature, anything of a guessing nature. One does not have to guess, as I see it, in any type of development in Section 14, if the development is proper. It lends itself to what you find in Section 11 immediately north of 14 and Section 23 immediately south of 14.

Q. Well, now, just a minute. Section 11 immediately above Section 14 is developed into both big hotels along Indian Avenue, such as the Ambassador Hotel; that is true, [31] isn't it?

A. That is true.

Q. Or the El Mirador Hotel?

A. That is true.

Q. And it is also developed into fine homes that run many acres in extent? A. That is true.

Q. Did you then, in fixing your value of these two 2-acre parcels in Section 14, assume that they were available at the date of your valuation, or in a reasonable period thereafter that was foreseeable, for a change-over into that development?

A. I assume that they were susceptible to the same type of development that you find in Section

(Testimony of Joseph A. Gallagher.)

11 immediately north, for this reason: You go down to the southeast corner—the southwest corner of Section 14, and you will find as nice a type of development along service station lines as you will find in almost any part of Palm Springs.

Q. Let me stop you there.

A. The Standard Oil. Well, I am just talking about what kind of development can go in there. You have Standard Oil with a nice, beautiful Standard Oil station, and you have Sips and Snacks Restaurant, which is very well kept, a very fine restaurant; then you have got six houses—[32] I am just talking about Section 14—you have six houses right on Ramon, just east of Indian Avenue and Ramon, that are very, very attractive houses, in Section 14; and you move a little bit east of that and you have got the Dakota Motel, which is somewhat in conformance with other inns and motels in Palm Springs; you have got a driving range; you have got other nice developments in there. The whole section, in my opinion, can develop just the same as 23 and 11 and the other sections, Mr. Brett, because south and west you have where King Gillette and others are living. Now, that is farther away from the heart of the city. I would not under any consideration penalize Section 14 for faulty development. It does not belong there. Section 14 is entitled to the best that it can receive and it should receive that.

Q. Then you have valued it, in other words, as

(Testimony of Joseph A. Gallagher.)

it would be if it was changed as you have just described?

A. Under the highest and best use—the only use that an appraiser should consider an appraisal—I consider how it would develop.

Q. And your answer to my question is?

A. No.

Q. Yes? A. No, no.

Q. All right.

A. My answer is no, for this reason: If the [33] highest and best use was in there, I would not under any consideration come in \$20,000 an acre. I might come in \$15,000, \$20,000 or \$25,000 a lot, but not an acre.

Q. I want to take just a minute on what you have said. The properties you have described there are down on Indian Avenue, which is the second most important business street in Palm Springs, aren't they? They face right on Indian Avenue?

A. Which properties are you referring to?

Q. The properties which you refer to as the Standard Oil station.

A. That is at Indian Avenue and Ramon, yes, sir.

Q. The other properties you described, too, are on Ramon, which is a major east-and-west thoroughfare at the south of Section 14.

A. Well, I would not call it "major," Mr. Brett. I would call it secondary, because when you get farther east—

Q. At any rate, it fronted on that street?

(Testimony of Joseph A. Gallagher.)

A. That is correct.

Q. How far are these lots from either Indian Avenue or Ramon? A. Which lots?

Q. The nearest point? The lots that you are referring to, which are lots——

A. 46 and 47. [34]

Q. ——46 and 47?

A. I should say a half a mile.

Q. Half a mile away from the property on Ramon?

A. More or less. No, no. I am wrong. About a quarter of a mile.

Q. On page 14 you say you give consideration to “neighborhood value,” which is the value that depends upon the neighbors. I take it by that you mean you give consideration to the development immediately around these properties. Is that what you mean by saying you gave consideration to neighborhood value?

A. Yes, properties immediately around Lots 46 and 47, and, too, the properties in these other sections which are adjacent to Section 14. That is neighborhood. A half a mile away, a mile away, I would consider neighborhood.

Q. All right. Now, you say you give consideration to sale value—sales in the neighborhood which tend to establish a level of value.

A. That is correct.

Q. Was that one of the principal elements in your value?

A. No, Mr. Brett, it was only one of the in-

(Testimony of Joseph A. Gallagher.)

cidental elements. All these were just incidental. They were considered.

Q. Was it your view that the sale value and the [35] neighborhood value were different?

A. They might be different.

Q. Then you say you gave consideration to "true value," which you define as "the buyer's justification to pay for property." Did you mean by that, that it was your conception that the price which a buyer would be justified to pay was a different value than the value as fixed by sales in the area?

The Witness: Will you repeat that question?

(Question read by the reporter.)

A. I did not.

Q. You conceive them to be the same?

A. Not necessarily. You may have a special buyer who would want the property for a special purpose, and he would be inclined to pay more for that than someone who did not want it for a special purpose.

Q. And you utilized that in fixing your value?

A. That was one of my considerations.

Q. Then you say you gave consideration to the "utility value," which you define as "the reasonable, fair, and warranted utility value which the purchaser should pay for the use of the property to good advantage." When you used that term, did you mean that he could get the zone changed and could clear out the surrounding areas from their present use? [36]

(Testimony of Joseph A. Gallagher.)

A. That was considered. When I considered the utility value, the best way for the property to be developed in a manner different from the way the property was improved at the time of the appraisal.

Q. And that was given weight in arriving at your consideration?

A. Just one of the considerations.

Q. It was given weight?

A. Just one of them. You have to——

Q. Is your answer yes?

A. My answer is yes.

Q. You have stated also, on page 15, that you considered “fair cash market value,” which you define as “the right of the landowner to receive the highest cash market value for the part taken, considered as the part of the whole.” What did you mean by that?

A. That should never have been there, Mr. Brett. I have been in so many condemnation matters that that slipped up, because there is no condemnation here at all. But the fair cash——

Q. That was not your definition of market value?

A. Well, my definition of market value?

Q. No. Pardon me.

Mr. Brett: Will you read my question, Mr. Bargion?

(Question read by the reporter.) [37]

Mr. Brett: Do you understand the question?

A. That was not my definition of market value.

(Testimony of Joseph A. Gallagher.)

What do you mean, cash market value? Fair cash market value is not my definition of market value.

Q. The definition which you have set forth on page 15, which says: "The right of the landowner to receive the highest cash market value for the part taken, considered as the part of the whole" is not?

A. That is not market value.

Q. Then thereafter you use the term "use value." You say, "The worth of subject property in the market, viewed with reference to the uses to which it is adapted." In using the term "to which it is adapted," did you mean which it was then available for?

A. Yes, which it was then available for, because market value takes into consideration the uses and purposes for which the property is adapted or is capable of being used.

The Court: You mean the highest and best use, Mr. Gallagher?

The Witness: That is correct, your Honor.

Q. (By Mr. Brett): Did you conceive there was any difference in the market value and in the use value as you have defined it here?

A. Oh, yes, there is a difference there, because under use value the worth of the property in the market is [38] valued with reference to the uses to which it is adapted. Now, you may have a different type of a buyer and a different type of a seller. Under this definition of use value, as I understand use value, we give a strong consideration to the owner's concept of what he should receive, more so than

(Testimony of Joseph A. Gallagher.)

to the buyer's concept of what he should pay. That is not market value.

Market value, you have got the buyer and the seller, each one understanding the terms and conditions of sale, and each one being willing and each one understanding. These were only considerations, Mr. Brett.

And, may I say again, any appraiser who appraises property, who does not give that property every consideration that is possible, is at fault, he is at error. He should not be an appraiser.

Q. Now I want to ask you another question. Next, on page 15, you referred to your consideration of the "value for subdivision purposes," which you define as "the value of subject property as a subdivision, plus an increased value caused by suitability for dividing into city lots and small acres." There are other things I won't refer to. Let us stop there.

The Court: How long is this going on, Mr. Brett? It is not helping me. It may be good for the record on appeal or something. [39]

Mr. Brett: I think, your Honor, it will help you when I get past this in a few minutes, when I get through in fifteen minutes.

The Court: I understand from this witness' statement that whatever he says in that report is merely just to buttress his opinion expressed upon the assumption that this property will be available for non-Indian use, a way of saying "free from the restrictions imposed by Indian ownership."

(Testimony of Joseph A. Gallagher.)

Mr. Brett: But he goes far beyond that, your Honor. He also assumes it will be available for uses which even a white person or anybody else could not put it to at this time. This property, by his own report, could not be used under this existing law.

The Court: He has explained that. He thought the highest and best possible use of the property warranted the city officials or the authorities in power to make the necessary zoning variances to permit that kind of use. What more can be said, more than that?

Mr. Brett: Your Honor, I think there are a couple of other things I want to find out. I am sorry.

The Court: I do not want to limit you, but it is a quarter of twelve.

Mr. Brett: I will get through with this witness before twelve o'clock, definitely. [40]

The Court: I thought we were going to finish the testimony this morning. You told me in thirty minutes we were going to finish this testimony. Let us finish it before we go to lunch, unless there is some particular reason not to, Mr. Brett. You estimated for me thirty minutes.

Mr. Brett: I wanted to ask certain questions, but I will pass them; but I do want to ask a couple more.

Q. Mr. Gallagher, as part of the paragraphs which I read, you say: "No consideration was given to a problematical value which the present owners

(Testimony of Joseph A. Gallagher.)

might receive after subdivision had actually taken place."

Is my interpretation correct on that, that you meant in evaluating this land you considered it was available for subdivision, that is what you assumed, but you did not give it the value it would have if it was already subdivided?

Mr. Preston: To which we object upon the ground we had been talking about Section 14 and subdivision may not refer to that, because there are three or four other tracts involved in that location.

The Court: Overruled. You may answer.

The Witness: May I have the question, please?

The Court: Oh, let us not go over this. This is just too much, Mr. Brett.

Mr. Brett: Your Honor, this is very important to me. [41] I am sorry. I think I can point it out in a minute, but it takes a little time.

The Court: It is in his report, isn't it? Can't you argue it?

Mr. Brett: I don't know. I am not sure that is what he means. I want to be sure.

The Court: Did you value it for subdivision purposes?

The Witness: I did not.

The Court: As if it were already subdivided?

The Witness: I did not, your Honor.

The Court: Does that answer your question?

Mr. Brett: All right, your Honor.

Q. The reason you did not do that, Mr. Gallagher, was because you knew from your experience

(Testimony of Joseph A. Gallagher.)

the retail value, after it was subdivided, of separate lots is entirely different from the value of acreage before it is subdivided; it is considerably more in a retail price, isn't it? A. That is correct.

Q. As a matter of fact, there is a mark-up of probably three times in the retail sale of separate lots as distinguished from the price that one would have prior to subdivision?

A. That is not correct, Mr. Brett.

Q. What would you say the mark-up would be?

The Court: It depends upon the land, Mr. Brett, how [42] much it is, how much it would cost to subdivide.

Mr. Brett: Well, isn't there a mark-up?

The Court: Yes. I will take judicial notice of the fact that there is a considerable mark-up between raw acreage and a subdivision where the curbs, the streets, and gutters are in.

Mr. Brett: All right. Then I just want to ask a couple more questions.

Q. Mr. Gallagher, will you look at page 18 of your report? Page 18 of your report states that you have evaluated the land in Section 14, the four acres, based upon your consideration of certain lot sales which you thereafter delineate; is that not true? A. That is correct.

Q. And the first one that you have there is designated as "A" and is described as "Lot 8, Warm Sands Park Tract"? A. Yes.

Q. Is it not a fact that your own figures there demonstrate what you have done is to take a par-

(Testimony of Joseph A. Gallagher.)

ticular lot, sold after it was subdivided, determined the amount of acreage in that lot, and then break it down into square feet, and then because an acre has 43,560 square feet, multiplied the square footage that you there arrived at by 43,560, and in that manner arrived at the acre value? [43]

A. That is not correct, Mr. Brett. I did not take a lot just because that lot favored me in my analysis of the market value of the property under appraisal. That would be so unfair and unjust——

Q. Just a moment. I am going to pass that. You said that is not the way. I am going to ask you one other question.

Do you recall in your testimony which we have over here, as part of the Della Brown testimony, you stated in effect that you found a group of values of surrounding sections, added them together and divided them by four? Do you remember that?

A. I took, oh, possibly 50 or 60 properties, the assessed value of the properties in the sections around Section 14 and Section 26, and about the same number of properties that had been sold or had been listed for sale around those sections, and from that analysis I was satisfied in my mind that my opinion of those values as given in my report was correct, and I still am.

Q. All right. Now I want to ask you a couple of more questions and I will be finished.

Will you look at page 24, Mr. Gallagher, of your report? Will you look at item 44 therein? Do you find it? A. I do. [44]

(Testimony of Joseph A. Gallagher.)

Q. Is that not a report of the same lot, Lot 8, Warm Sands Park Tract?

A. That is possible. When you have a hundred and some-odd comparables, that might have gotten in. I do not see how that is going to affect my comparables at all. It is just a repetition of one lot.

Q. Will you wait just a minute? In your report, on page 18, you report the sale of that lot at \$8,820. In your report, on page 24, you report that lot as having been sold for \$5,000. Isn't that true?

A. Well, there may be some mistake there. I can't remember just why I had on page 18 Lot 8, Warm Sands Park Tract. The two tracts are the same. That looks like Lot B, to me, Mr. Brett, instead of Lot 8, on my sheet here.

Q. All right. Now I want to call your attention——

A. I don't know. I can't remember back that far.

Q. I want to call your attention to a couple of more, Mr. Gallagher. Will you look at page 18 and the number "E" or letter "E," Lot 1 of the Warm Sands Tract? A. Yes, sir.

Q. You report that sale at \$4,680 and compute the acreage value on that basis; is that not correct?

A. Valued at \$4,680, that is correct.

Q. Will you look at page 24, item 47?

A. Yes, sir. [45]

Q. There you report that sale at \$4,200, do you not?

A. No. In one of these instances the figures

(Testimony of Joseph A. Gallagher.)

were based on the assessed value of the property; in the other instance it might have been what the property sold for. I do not remember that now. But I think you are confusing my assessed value approach to value and the sales and solicitation approach to value or market approach.

Q. All right. Now I want to ask you one more. Will you look at page 19, under "Q"? You report Lot 4, Block 24, as valued at \$87,180, is that not correct? A. Yes, sir.

Q. All right. Is not that the same property that you report as number 32 on page 24?

A. That is. My answer would be the same as my answer to your other question.

Q. Your report there is \$75,000?

A. That is right.

Q. Can you tell the Court which one of the various discrepancies you used, whether it was the list you put on pages 18 and 19 or whether it was the list you put on pages 23 and 24?

A. I try not to use any discrepancy, Mr. Brett. Under the assessed value, with the factor that the assessor uses, would indicate one value, if that property were [46] listed for sale for \$75,000; and under a factor of 6 or a factor of 5, used by the assessor's office, it shows \$82,000. I do not see where there is anything wrong in the report.

Q. I have one final question. Can you tell me any sale that you discovered in your entire investigation of a 2-acre piece—I mean an acre piece at \$20,000, or a 2-acre piece at \$40,000, or any other

(Testimony of Joseph A. Gallagher.)

combination of acreage in which the acre price was \$20,000, anywhere in Palm Springs?

A. I think you asked that question before and that is in the transcript, Mr. Brett. But would you mind repeating that and I will be happy to answer it again for you?

The Court: Please read it, Mr. Reporter.

(Question read by the reporter.)

Mr. Brett: I am talking about a sale.

A. My answer to that is "No," and my explanation is that there is no one—there was no one-acre piece and no two-acre piece available for sale or purchase at the time of the appraisal that I was able to find.

Q. In your investigation did you find any property—

The Court: Mr. Brett, you have put about fourteen questions since you announced you were through, and this last one you called "the final question." Now you are putting another one. How long is this going to continue? [47] If you have an important question, I won't preclude you, but you are lulling us into a false sense of security here.

Mr. Brett: I am sorry, your Honor.

The Court: By announcing each time that you are through. If you have a question you wish to put, you put it.

Mr. Brett: You Honor, I never want to offend this Court.

The Court: No offense.

(Testimony of Joseph A. Gallagher.)

Mr. Brett: I thought the Court at least would be interested in knowing whether there were any sales a man could find anywhere in Palm Springs at the fantastical prices he has told about.

The Court: I believe I recall that question from the last hearing and the answer was "No." I may be in error, but I have a very definite recollection that you asked that question before, either of this witness or some other witness, and they said, "No."

Mr. Brett: Then, with your Honor's permission, it will be passed. But I would like to ask one final question, and this is final.

The Court: Very well.

Q. (By Mr. Brett): Mr. Gallagher, taking any of the figures which you have given here as the acreage value of any portions of the lands that are here under consideration, [48] did you in connection with your investigation find any transaction that had resulted in a sale for so much money per acre as any amount that you have reported here as the value of these properties?

A. It is very hard to answer that question. I mention that there are no 1-acre parcels listed for sale nor available for sale that I was able to find.

The Court: Can't you just say, "No"?

A. No. I answer that no.

Mr. Brett: That is all, I think, your Honor.

Mr. Preston: May I ask just one question?

The Court: Yes.

(Testimony of Joseph A. Gallagher.)

Redirect Examination

By Mr. Preston:

Q. Have you rechecked your valuation since you made it in 1947? A. I have, Judge.

Q. Are you satisfied with it today, as you were then? A. Definitely.

Mr. Preston: That is all.

The Court: Do you still stand on the report which is in evidence?

The Witness: I do, your Honor. [49]

The Court: Very well. Anything further of Mr. Gallagher?

Mr. Brett: No, sir.

The Court: You may step down. Your next witness.

The Witness: Thank you, Judge.

Mr. Brett: May I call Mr. Jones?

The Court: Yes.

DONALD C. JONES,

called as a witness on behalf of Respondents, being first duly sworn, was examined and testified as follows:

The Clerk: You have been heretofore sworn, Mr. Jones, have you not?

The Court: Didn't you appear and testify?

The Witness: I did on the Della Brown case, your Honor. Oh, I did in this case, also.

The Reporter: I know that Mr. Jones' report was copied into the transcript, but I do not believe

(Testimony of Donald C. Jones.)

he was sworn and testified orally at that previous hearing.

The Court: As I recall and the reporter suggests, Mr. Jones' report was copied into the record.

Mr. Brett: His report is in, but there was no testimony.

The Court: There was a stipulation or a question and [50] answer document received.

The Witness: I believe it was received while I was on the stand.

Mr. Brett: Yes, that is correct, your Honor.

The Clerk: That is Exhibit F, the testimony of Donald C. Jones as to his qualifications as an expert real estate appraiser.

Mr. Brett: Yes.

(The witness was sworn by the Clerk.)

Mr. Brett: Mr. Clerk, will you hand this up to the Court? I have an original and a copy of a hypothetical question, so counsel can object if he is so minded.

The Court: Has the witness read the question?

Mr. Brett: Yes. I am merely going to ask him the answer.

The Court: The question will be deemed repeated and will be copied into the record at this juncture as having been propounded to the witness. Let the question be marked as an exhibit, Mr. Clerk, as Respondent's Exhibit T.

Is there objection to the question?

Mr. Preston: I think not.

The Clerk: This will be R, your Honor.

(Testimony of Donald C. Jones.)

The Court: R?

The Clerk: Yes.

The Court: Yes. I am sorry, Exhibit R. [51]

(The document referred to was received in evidence and marked Respondent's Exhibit R.)

(The hypothetical question, "Exhibit R," is in the words and figures as follows:)

Hypothetical Question.

Assume that the interests of Lee Arenas in the 2-acre parcels, the 5-acre parcels, and the 40-acre parcels, described in the complaint in case No. 1321-O'C Civil, as the Lee Arenas and Guadalupe Arenas selections, consist of the vested right to receive at a subsequent date which is not now known, providing that he does not die in the meantime, a conveyance in fee simple absolute to such property, and that until such conveyance has been made and delivered he has the right to personally use and occupy all of such property, and has the further right to lease such property for grazing or farming purposes for not to exceed ten years, providing that such lease is first approved by the Secretary of the Interior of the United States or his authorized representative, and he has the right to lease such property to a third party or parties, who are not Indians, for business purposes, for not to exceed five years, providing that such lease is first approved by the Secretary of the Interior of the United States or his authorized representative; that he is entitled to receive the income derived from such leases unless the

(Testimony of Donald C. Jones.)

Secretary of the Interior of the [52] United States shall determine, in his discretion, that such income shall be held in trust for his benefit by the Office of Indian Affairs; that the present trust period expires on May 9, 1952, but may be continued for periods not to exceed 25 years without his consent and at the sole discretion of the President of the United States; that since December 15, 1933, all trust patents in severalty have been extended, prior to their expiration, for 25-year periods, by a general Executive Order issued by the President of the United States, regardless of his political affiliation, and there is no present record of any change in the policy of the present incumbent of that office; that, in the event of his death before he receives such patent in fee simple and free of restrictions, his rights will descend to his heirs at law, except that with the consent and approval of the Secretary of the Interior of the United States, he may dispose of the same by Will; that until he received a patent in fee simple free of restrictions, he may not sell and may not encumber his interest under such trust patent to any extent or for any purpose, and assume that it is such interest that would be transferred by a conveyance and that the purchaser would acquire such interest subject to the same conditions, what, in your opinion, would be the fair market value of such interest in said 2-acre tracts; what, in your opinion, would be the fair market value of such [53] interest in said 5-acre tracts; and what, in your

(Testimony of Donald C. Jones.)

opinion, would be the fair market value of such interest in said 40-acre tracts?

A. The answer, in my opinion, your Honor, is that the value of the trust patent as to Lots 46 and 47 would be \$12,800, that two lots together; the value of Lots 39 and 40 would be \$40,000; and the value of the 80 acres, the northwest quarter of Section 26, the value of the trust patent on that property would be \$35,000; or a total of \$87,800.

Q. (By Mr. Brett): Now, Mr. Jones, has there been a change made in your value of Lots 46 and 47, and 39 and 40 as to the trust patent value?

A. Yes, there has been.

Q. As distinct from that which your report shows, as filed in 1947?

A. Yes, sir.

Q. Will you explain your reasons for the change?

A. My reason for the change is that the circumstances applying under the trust patent have been that, although the property could be leased, it was subject to a 30-day cancellation clause. I understand that that requirement has been lifted and the property can now be leased for a 5-year period without cancellation clauses therein.

Q. Mr. Jones, have you had experience in subdividing properties in Southern California? [54]

A. I have on numerous occasions.

Q. In connection with your activities have you also investigated subdivision properties for the purpose of appraising them?

(Testimony of Donald C. Jones.)

A. Yes, sir.

Q. As a result of that, have you formed an opinion as to the approximate percentage of increase in the value of property if you lump the retail value of the lots in a subdivision as compared to the wholesale price for a subdivision?

Mr. Preston: That is in violation of our understanding.

The Court: Is there objection?

Mr. Preston: I object to it on the ground——

Mr. Brett: I did not hear the objection, your Honor.

The Court: He says it is a violation of some understanding.

Mr. Preston: It disregards the understanding that he would not go into this hypothetical question, which was the only thing he was going to put Mr. Jones on for. Now he is going into the specifications.

Mr. Brett: I will put it this way: I do not understand that I am, but I never want to be violative of any understanding. If Judge Preston says so, I would not even want to violate what he thinks. But I had not so [55] understood or recalled. I am not going to violate anything counsel says I have made an arrangement on.

The Court: Gentlemen, so the record will be absolutely clear—it may be clear—it is understood that Mr. Gallagher's testimony as to values and the other witnesses' testimony as to values, even though heretofore given, embody opinions as to

(Testimony of Donald C. Jones.)

value of the present. Is that your understanding?

Mr. Brett: No, that is not true, your Honor, because my witnesses testified last November and would testify now that the values are different. But I understood Judge Preston and I were going to rely upon that other testimony, and I am not going to offer it.

Mr. Preston: Just as it stands, with the exception of this hypothetical question.

The Court: As I understand it, the valuations must be determined as of now. Is that your understanding of the mandate?

Mr. Preston: That is the reason I asked Mr. Gallagher if his opinion was the same now as it was then.

The Court: That is what prompted me to ask the question. As I understand—and I want to be sure that the record is clear and that there is no misunderstanding about it—that Mr. Gallagher in effect brought his testimony up to date, and any opinions he expressed were opinions as [56] at present. Is that your understanding of the record, Mr. Brett?

Mr. Brett: I believe that is the record, yes, your Honor. But I am in this unfortunate position now: I did tell Judge Preston that I was only going to produce Mr. Jones for the limited purpose. In fact, I thought originally, until I discovered that there were certain factors to change Mr. Jones' testimony about trust patents, and also discovered that there

(Testimony of Donald C. Jones.)

was something in the copy on file which was not in my copy of his report with reference to trust patents, I told Judge Preston that I felt that I had to have some testimony under our theory as to the value of the Indian's interest in that trust patent.

I feel this: I feel I should at least ask to be relieved from the stipulation, even if I get it in the light of what has now taken place, because I know Mr. Jones' values are different.

The Court: Are the values you have given your opinions as of now?

The Witness: No, sir, your Honor. They would be slightly less.

The Court: As of what date?

The Witness: They would be slightly less.

The Court: As of what date are these figures given?

The Witness: These figures are as of 1948, [57] your Honor.

The Court: In other words, the opinions you have expressed in response to the hypothetical question, Exhibit R, are values, in your opinion, which existed in 1948?

The Witness: Yes, sir.

The Court: Today you would say they were slightly less?

The Witness: Today I would say they were slightly less because of the falling off of the market in Palm Springs.

The Court: Anything further from Mr. Jones?

(Testimony of Donald C. Jones.)

Mr. Brett: As I say, in view of the fact that we are faced with this situation, I do not like to make a stipulation and to ask the witness to agree that his values are different. So may I, to that extent, be relieved?

Mr. Preston: I am going to relieve you as far as I am concerned.

The Court: The witness has just testified that the values would be slightly less today.

Mr. Preston: Slightly less. He testified to percentage before.

Mr. Brett: May he just testify to the percentage less, and that will be sufficient?

The Court: Yes.

The Witness: I think it is about ten per cent, your Honor. [58]

The Court: Ten per cent less today?

The Witness: On the general average of the real estate market, yes. I may make it clear, your Honor, that I have not checked any sales since 1948 in Palm Springs, but I have interviewed several brokers down there and discussed the general trend of the market.

The Court: And your opinion is that the comparable valuations as of the present would be approximately ten per cent less?

The Witness: Yes.

The Court: Than the valuations you expressed as of 1948?

(Testimony of Donald C. Jones.)

The Witness: That is my opinion, your Honor, yes, sir.

The Court: Any further questions of Mr. Jones?

Mr. Preston: Yes, I want to ask him two or three questions.

The Court: I take it Mr. Gallagher is still here. Would you come forward, Mr. Gallagher? I want to clear the record on the testimony.

Are the opinions expressed in your report the opinions you hold as of the present value at this time?

Mr. Gallagher: They are, your Honor.

The Court: We asked you that in substance, but I wanted the answer to be absolutely clear.

Mr. Gallagher: That is correct, your Honor. [59]

Cross Examination

By Mr. Preston:

Q. Mr. Jones, you have assumed that the use that is now being made of this property is the highest use that it is susceptible of, have you not?

A. No, I have not, Judge Preston. I concede that the property might be put to other uses were the regulations changed and the area cleaned up.

Q. Didn't you testify in the other case, the Della Brown case, that you thought that the property was now being put to its highest use?

A. Under the circumstances that surround it, I did; yes, sir. And I conceive that any property might change its use where the important factors

(Testimony of Donald C. Jones.)

and regulations change. Perhaps I misunderstood you.

Q. You think that this property is being used for its highest and best use?

A. I think that it is with the circumstances that surround it at the time of the valuation, yes, Judge Preston.

The Court: By that you mean as long as it is kept Indian-held land?

The Witness: Not necessarily. If it were owned by white people, it would still be governed by the same factors which govern it now, these 2-acre tracts. [60]

The Court: You mean the surrounding structures?

The Witness: Yes, sir.

Q. (By Mr. Preston): Isn't it your opinion if this were improved it would be of less value than it is now?

A. If these 2-acre tracts, with residences, yes, sir; they would not bring the income for that money.

Q. In other words, you state that the property as now being used is the basis upon which you made your valuation?

A. Yes. I valued the property as I found it, Judge Preston. Yes, sir.

Q. You realize, do you not, that the trust patents will expire, these limitations, on the 9th day of May, 1952?

A. I assumed the assumptions which were made

(Testimony of Donald C. Jones.)

in the hypothetical question, in which I assumed that the President would renew that trust patent for another 25 years, or the buyer might assume so.

Q. You have assumed that the President would in all probability extend the trust patents?

A. Yes, I have to assume the factors in my hypothetical question.

Q. Just answer my question. You assumed that they would be extended?

A. I assumed that the buyer would so consider it. [61]

Q. You have assumed that the Government would not consent to a sale of the property, too, haven't you?

A. I have assumed that the trust patent has to be sold, the trust patent has to be——

Q. Answer my question. Have you assumed that the Government would not consent to a sale of the property and free it from the trust patent?

A. In valuing the trust patent, I am assuming that, yes, sir.

Q. That is what you mean you are valuing now. You have assumed, also, that they would not consent to a lease to that property, have you not?

A. No, sir. I am assuming that the property could be leased.

Q. Have you assumed that it was the duty of the guardian of these Indians to act in good faith toward them, or bad faith?

A. I have made no assumptions regarding the

(Testimony of Donald C. Jones.)

guardian of the Indian in answering this question.

At least I can't recall any——

Mr. Preston: I can't hear you.

The Court: You assumed the conditions stated in the hypothetical question?

The Witness: I have, sir; yes, sir. I have read it very thoroughly. [62]

Mr. Preston: All right. That is all.

Mr. Brett: I want just one question, since Judge Preston asked him for his reasons.

Redirect Examination

By Mr. Brett:

Q. What is your reason for your statement that it is your opinion, considering the present environment, that the property is having its highest and best use for the purpose of lease at present?

A. The property as now environed, your Honor, a possible income on each acre from 12 shacks, which is quite substantial. If it were put to its use for residential property under the zone regulations of Palm Springs, it might have four homes on it which would not rent for anywhere near the income that the 12 dilapidated shacks do.

Q. (By Mr. Preston): You based your opinion on what it was being used for now, as distinguished——

A. Yes, sir. I have based my opinion of that property as I found it and the factors environing it which a prudent buyer would consider.

(Testimony of Donald C. Jones.)

The Court: Mr. Ennis?

Mr. Ennis: Have I a right to ask one question, your Honor?

The Court: You have a right to ask all the questions [63] you like.

Q. (By Mr. Ennis): Mr. Jones, assuming that the zoning ordinance is changed or varied so that you could put more than four residences on it, you could put a store, you could put an office building, you could put a bank, you could put a shop, would the value then for the parcels be different?

Mr. Brett: Your Honor, I have to object to that. That all turns really upon the Geiger case, 210 Pac. 2d 717. These values have to be fixed in the light of conditions as they exist, and not on the theory there will be a change and then valuing them as they would be if so changed.

The Court: Would not that objection limit you to the assumption that the trust patent would expire in 1952?

Mr. Brett: No, your Honor, because——

The Court: Because that is a condition as it is today.

Mr. Brett: I understood the question to include zoning regulations.

The Court: Yes. But it is predicated upon the assumption implicit in the question that the authorities that be could be induced or might be induced to change the zoning regulations.

Mr. Brett: That is correct.

(Testimony of Donald C. Jones.)

The Court: Just as your question is based upon the assumption that the President could elect to renew the trust [64] patents.

Mr. Brett: If the Court please, the question that counsel put to Mr. Jones to which I am objecting is this: If certain things had occurred and taken place, would it not be your opinion that the property would have a different value? That is what he said.

The Court: That is not my understanding of the question. I may not have heard it properly.

Mr. Brett: May I have it read, then?

The Court: I understood the substance of the question was to ask the witness to assume that it could be used for certain purposes, and under those circumstances would the opinion be different. Does that state the question?

Mr. Ennis: That was the question I put, or the meaning of it. The question I put, your Honor, and he answered, was it would be less valuable if he had it improved.

The Court: Well, for residential purposes.

Mr. Ennis: No; any and all kinds of purposes.

The Court: Do you understand the question?

The Witness: Yes, I believe I do, your Honor.

The Court: You may answer.

A. Assuming that the property changed in the entire environment of the property, such as you describe, and it became a commercial district, of course, the property [65] would have a higher value for such use. It is not conceivable, in my opinion,

(Testimony of Donald C. Jones.)

may I say, your Honor, that any prudent buyer would consider that such a thing would occur on this particular property which is a quarter of a mile from the business center of Palm Springs.

The Court: Anything further?

Mr. Ennis: I have no further questions.

The Court: Any further questions by anyone from Mr. Jones?

You may step down, Mr. Jones.

Mr. Brett: That concludes the testimony. But, your Honor,—

The Court: Does the United States rest?

Mr. Brett: Of course, I will have to abide by what your Honor wants, but, your Honor, I believe I can point out things, since I am somewhat curtailed—

The Court: I am referring to the testimony now.

Mr. Brett: No. As far as the testimony, I will submit it, yes.

The Court: I am speaking of the evidence now. Does the Government rest?

Mr. Brett: Yes, your Honor.

The Court: Do all parties rest?

Mr. Preston: Yes.

Mr. Ennis: Yes, your Honor. [66]

The Court: The evidence is closed, then, as I understand it.

Mr. Brett: That is correct. We rest. [67]

Los Angeles, California,

Friday, February 16, 1951, 10:00 a.m.

(Case called by the clerk for argument.)

(Brief discussion of court and counsel omitted from transcript.)

Mr. Clark: Your Honor, might I just ask a question? I have prepared a map here which shows, outlined in green, the land involved in this instant proceeding and in red the land that was involved in the proceeding before Judge Cavanah. Would it not be of some assistance to the court to have this visual picture of the location of the lands and their relation to streets and other lands before you?

The Court: Yes. If there is no objection, I will receive it into evidence.

Mr. Brett: It so happens, your Honor, that the exhibit has many other things on it. This is merely a matter of court proceeding, and it is to be understood it is being offered only for the purpose of showing the streets, alleys and other public ways, and the location of the property that is involved in this proceeding and those which were involved in the Della Brown or Eleuteria Brown Arenas proceeding. I have no objection if it is offered, however, as the other material.

The Court: Before you go ahead, let us ascertain whether that is the purpose. [69]

Mr. Clark: That is the only purpose, your Honor. It was the only map we had.

The Court: Then, if Mr. Brett has no objection

to raise, I will receive the document into evidence.

Mr. Clark: That is right.

The Court: It will be Petitioners' next exhibit.

Mr. Ennis: I have no objection to it, your Honor, excepting I think the outlining is blue here for the land, and not green as Mr. Clark said.

Mr. Clark: My wife has told me for 43 years I am color blind, and I accept it.

The Court: Very well.

Mr. Preston: I agree that I cannot tell blue from green.

The Court: Very well. Mr. Ennis, I take it you will not stand on that objection.

Mr. Ennis: No. I think it will be of assistance. It does show the relationship.

The Court: Let it be marked Exhibit S. The last one, Exhibit R, was a hypothetical question. Of course, those are the Government's numbers but it won't be any material consideration whose exhibit it is.

(Further discussion and argument omitted from transcript.)

[Endorsed]: Filed Aug. 7, 1951. [70]

[Title of District Court and Cause.]

Los Angeles, California,

Monday, May 7, 1951, 10:00 a.m.

(Case called by the clerk for hearing motion of defendant for a new trial and to amend findings and judgment, on question of attorneys' fees.)

The Court: I have gone over these motion papers, Mr. Brett.

Mr. Brett: Your Honor, there is one authority. I don't know that it particularly adds anything, but that I had not discovered before, which I would like to read. It is very short. It is a decision of Mr. Justice Holmes in *McGovern v. New York*.

The Court: Would you give the citation?

Mr. Brett: Yes, sir. It is 57 Law Ed. 1228-1232.

The Court: Do you have the official U. S. citation?

Mr. Brett: 1228-1232. I asked the young lady to put down the U. S., but unfortunately she did not do so. I will have to supply that.

The Court: 57 Law Edition what?

Mr. Brett: 1228, *McGovern v. New York*. (229 U.S. 363 (1912)). The paragraph I have in mind is very short.

"The plaintiff in error was entitled to be paid only for what was taken from him as the titles stood, and could not add to the value by the hypothetical possibility of a change unless that possibility was [2] considerable enough to be a practical consideration and actually to influence prices."

Now, I do not want to take any time. Your Honor has read the papers. I would like to point out just this, your Honor, and then I will conclude it.

We recognize that the court in this case has given very careful consideration to this matter. I so reported it. I cannot conceive any more careful consideration than your Honor has given.

We recognize the broad scope of discretion that is

vested in the court. We recognize, too, that fixing the market value as a basis, first, for fixing attorneys' fees is very illusory, but nevertheless we feel that you must have certain limits. In other words, we believe the word "informed" should have the same importance as a guess; that it can't be just a guess.

As I pointed out in the memorandum, all the attorneys predicated their values, of course, upon the theory that it would vary to some extent, depending upon what was recovered for the client, and they even failed to point out to the court what it was. I believe also that in the broad experience that this court had before he came on the bench, and some reasonably broad experience that I have had, that it is proper to say that where an opinion is expressed as to value, in which practically every element that is considered, if standing alone, would be improper, and in which, at best, it appears that the witness is [3] quite cloudy as to the final predicate upon which he expresses an opinion—and there I refer to the fact that Mr. Gallagher refers in his opinion to the so-called true value, market value, and use value, and value to the owner, and various other things I won't take time for—that there we have a situation where, at least in my experience, the average businessman either would not rely upon such opinion or he would use very great caution.

I do not expect your Honor to set aside the figures because, although I do that in the motion and I feel that it is justified in doing so, but nevertheless, as I say, I know that this case has been before you

a long time. We know that you have done everything you could with what we gave you, and therefore we can't see any basis of criticism—at least I can't—but we do feel that under those peculiar circumstances, where in effect your Honor had to take a pretty broad guess—not too much to work on—even though it may be true that we did wrong—and I can't, of course, say whether we did or not—in getting an appeal which got this remanded, instead of taking what you originally determined, we feel that this would be an appropriate case where you could do two things.

One, fixing it, since you have to, in money, but, at the same time give some protection so if, perchance, your guess was in error, there would be something left to this Indian man. I have the practical concept in mind that this [4] is going to be a judicial sale, if it has to be a sale. I still fervently hope that there will be something worked out, but the last word I had when I was in Washington two weeks ago, that unless Congress will pass a special bill, they just can't find any way it can be paid.

So if we have a judicial sale, we do not have this matter we would have with someone outside who stands on a par with the average citizen. If I had that property and I had the judgment against it, assuming it to be anything near the value the court feels it has, I could go out and arrange financing. I would not allow the property to be sold. But the Indian cannot do that, except in this one manner to which the door has been opened. The property cannot be encumbered; it cannot be sold. He cannot

make any engagement of any kind. The result is that he stands in this relatively hopeless position unless the Government can help him out, and insofar as I can find, we cannot help him out. The judgment creditor can bid up to the amount of his judgment without paying it in money. Anyone who is going to bid otherwise has to put up cash and, as your Honor knows, there is a considerable resistance to putting up cash. So there is a strong possibility, in our thought, if a judicial sale takes place, that instead of reaching the minimum your Honor has in mind, because it is a judicial sale as distinguished from a market sale, that the result would be very considerably less. It could be no more [5] than would be paid any judgment creditor, but we feel it may possibly be something.

The thing we feel is this: Under those circumstances and within the court's broad powers as chancellor to fix the sale up to \$90,000, they should get that. That has been your view and, as I say, under the circumstances we see no way to attack it, but also fix it that if the amount won't bring that—if, for instance, on the judicial sale and at the time it is made it won't come to anything like that—fix a percentage of what it will bring, and even set the same percentage that you originally set. I think that is in your discretion. If you feel, in aid of this, that you want to raise the percentage because of that factor, that is within your discretion. In other words, we simply selected that because that seemed to be your predicate on which you made the \$90,000.

The Court: Let us hear the other side.

Mr. Brett: Yes, sir.

The Court: I am only interested in this suggestion, Judge Preston.

Mr. Preston: Your Honor, my client is present and I have to say a few words that I would not ordinarily say if he were not present, I being the client.

The Court: Yes, sir.

Mr. Preston: May it please the court, the question of value in this matter is material only as a justification or [6] the lack of justification for the amount of attorneys' fees fixed by the court. You were directed to find the value, but whether you are right or wrong on that issue is not material so long as the value is sufficient to justify the figures you gave as the reasonable amount of the attorneys' fees.

The attorneys' fees were fixed by you upon the basis of four witnesses and a concession by the attorneys for the Indian, Lee Arenas.

Mr. Beckley, whose testimony is not questioned, fixed it as a million; Mr. Gallagher, the same; the two Government witnesses, about a quarter of a million each; and Mr. Ennis, on behalf of Lee Arenas, suggested \$400,000 or \$450,000.

The court took 40 per cent of our figures and upped the figures of the two experts and came practically to the same conclusion as that conceded by the attorneys for the Indian.

You had the perfect power, your Honor, to accept such portion of the testimony as you saw fit. You could take the testimony of these two experts

of the Government and up it to \$400,000 from \$250,000 if you saw fit and the facts warranted it. You could take the larger figure and reduce it, as apparently you did, to about 40 per cent.

So there is nothing wrong with the figures here. There is no error that is of any importance on appeal here, if you were in error. And I say you have exercised your discretion; you have weighed the evidence; you have made the judgment, and [7] it is absolutely faultless, in my opinion.

The court wants to know whether or not I am interested in a limitation of the judgment to be 27 per cent of the cash value of the property.

The Court: The motion is $22\frac{1}{2}$ per cent.

Mr. Preston: $22\frac{1}{2}$ per cent, yes, $22\frac{1}{2}$ per cent of the cash value of the property.

It is not the disposition of counsel, of whom I am one, to in anywise take advantage of Lee Arenas. On the contrary, we are in a position to co-operate with Lee Arenas. The only thing in this case that is bothering me at all is the United States Government and its narrow, constricted view of what it ought to do.

The time for the period of redemption, of the extension of the period, unless it is extended—the period where fee simple titles will result—is in 1952. If the Government of the United States would now, as it can do, lift that restriction, we would fix this matter up with the Arenas in three days or less. There isn't any trouble about it at all and there isn't any reason for this court to be concerned about

whether the Indian will be mistreated or not in the case of a judicial sale.

The sale will be free from its restrictions, as I understand it, and when so free from restrictions, the purchaser will get a title free from restrictions. And I will bet you [8] there are 25 or a dozen, at least, bidders would be there to see that this property brought its full value. I have people coming, I know, even wanting to know when they can get a chance to try to buy some of this property.

There isn't any controversy here at all and there is no crisis, your Honor whatsoever. The Government is narrow in its conception of what its duty is in this case. It has been narrow all the time. Mr. Brett is being directed from a narrow space in the Department of Justice—and having been connected with it 12 years in my lifetime, I know just what he is up against. And there isn't any way in the world that I can see that you can do this, but my own opinion is it will never come to that point at all.

The Court: Would the petitioners here be prejudiced if, for example, they were limited by the judgment to a maximum recovery of \$90,000, limited to 25 per cent of the proceeds of the property?

Mr. Preston: Well, your Honor, you limited it to 22½ per cent before and the Government appealed. Now they are coming in here and wanting you to put that limit on it again. It is childish, in my opinion.

The Court: I am not considering it from the point of view of the Government's reaction.

Mr. Preston: I know you are not.

The Court: But from the point of view, without repeating [9] all of the considerations that we have discussed heretofore, I was attempting to think and have been attempting to think of some prejudice that might come to the petitioners. I am assuming, of course, your confidence in the values which have been found, that those are values which, upon the sale, will have pragmatic sanction.

Mr. Preston: Did I understand you to suggest 25 per cent?

The Court: Yes, I was suggesting that. I am thinking not only of the substance of the thing but the principle of the matter.

Mr. Preston: This property will not be put up as a whole.

The Court: Yes, I have that in mind. Of course, you would be prejudiced to this extent: You could not bid your amount against one parcel; you could only bid up to 25 per cent of your amount.

Mr. Preston: I do not think that is fair to us. I think we have done our duty, your Honor. We have done it faithfully. We have waited vainly. I am putting up money for a share in it now, and the money already in it, and the Indians or the Government is stepping in their shoes, and I do not think the Indians would care one way or the other about what you do about this.

The Court: I am only thinking of the possibility that the values might not be translatable into money, even though the values are sound as of a given time.

Mr. Preston: How would you word the judgment

when we have got to offer it in pieces? You would have to specify the limit.

The Court: You would have 25 per cent of the proceeds.

Mr. Preston: You would have to put a limit on each piece.

The Court: You would have 25 per cent of the proceeds. And I suppose, as a practical matter, we would have to provide for you to bid up to 25 per cent against——

Mr. Brett: May I speak, your Honor?

The Court: Yes.

Mr. Brett: It seems to me there would not be any reason why—I am just thinking this up—assuming there would be just one part, let us say, the two acres, if there was a counter bid there for \$80,000, I see no reason why they could not bid on it \$90,000.

Mr. Preston: If you would consent for us, we would take 22½ per cent of the land and be glad to do it.

Mr. Brett: That I can't do. It is not that I do not want to.

The Court: But here, Mr. Brett, suppose there is one parcel offered.

Mr. Brett: Yes, sir.

The Court: Can your judgment necessarily provide that, as to that parcel, the petitioners here could only take 25 per cent, or whatever the present percentage, of the proceeds [11] of the sale of that parcel? Otherwise the heart of the watermelon might be put up the first time and that would be the thing that would bring, say, \$90,000 of a money

judgment to the creditor, and the remaining parcels might not be worth \$2,500.

Mr. Preston: It is impractical.

Mr. Brett: Thinking in the abstract, I would say, "Yes, that is true." However, I believe, your Honor, that we would feel that at least we had done the best we could for the Indian if we had saved some, even though it was not the heart. I would not stand for the point that we would have to restrict the bid on any particular parcel to bid up to a percentage. In other words, all we would feel is this: That the total amount would be not over \$90,000, but if the bids were such that, for instance, a piece was coming up for about \$25,000 or \$30,000 or something like that, which is in line with our evidence, that then they would only get a percentage of that. In other words, we want to save some land for the Indian.

Your Honor, I would like to say this one thing. I do not like to go into matters outside of court, but part of what Judge Preston said is not entirely clear. I was in Washington less than 10 days ago and talked with Mr. W. H. Flannery, Assistant Solicitor. He told me he had not had the opportunity to have Judge Preston's views on it, but had said that the Government would join with Mr. Clark, if he and his associates would present a bill to Congress, and Mr. Clark said they [12] would not object to that.

Mr. Preston: I never heard of that before and I would not pay any attention to it if I had.

Mr. Brett: I think I could make the statement

under oath. I asked Mr. Clark could I make that representation to the court. He said they had young fellows in his office and they were ready to draw a special bill. Mr. Clark objected. So I just say that from the implication——

Mr. Preston: I talked to Mr. Flannery. He told me that they could not afford to let the Indians' land sell.

Mr. Brett: That was before this last judgment, your Honor.

Mr. Preston: Could not afford it, and the judgment is good. Why, it is ridiculous for the Government to sit around and allow this Indian's land for sale. It is perfectly ridiculous. It is a reflection on the whole department. There is a bad enough odor around it now, and this is certainly a perfectly black eye.

Mr. Brett: I want it understood I think of its impracticalness, but I have been permitted to state to the court if any counsel who are interested on the other side here would agree with the Government or the Department of the Interior, that the Department of the Interior is prepared now to present to Congress a special bill for the payment of this judgment.

Mr. Preston: We have no objection to bills, but we are [13] not going to wait for Congress to give us a bill. We have our lien and we are going to hold on with it.

The Court: I do not see how, Mr. Brett, under the mandate here and the opinion of the court, over the objection of the petitioners I could reimpose this

percentage limitation. Unless all parties agreed to it, I fear if there were an appeal the Court of Appeals might construe that as in the nature of a disregard of the mandate.

Mr. Brett: Well, your Honor—

The Court: I still adhere to the view, as you gentlemen know, that the fair and equitable way to do this is to give the petitioners a share of the recovery in kind, so that we know what we are adjudicating, what we are awarding.

Mr. Preston: And the Government could consent to the Indian doing that. They have got all the cards, the ace in the hole, everything else, and all they have to do is to consent to the Indian raising the money to pay us or consent for the Indian to give us a piece of the land, either of which we are entitled to.

Mr. Brett: Mr. Ennis is here and I know he will bear me out. There was a discussion not so long ago in the corridor there of the possibility of my getting the authority in this particular case of merely releasing the restriction would Lee Arenas immediately oppose that. We have to treat this, of course, not on an isolated basis. We can treat the [14] matter of a judgment on an isolated basis, but on the question of whether we are going to release matters of that kind we would immediately have a group in Congress then, raising "Ned"—that is using the vernacular—because we are cheating the Indians out there. I am satisfied they do not want to have free patents for the reason they benefit by having trust patents.

If your Honor feels you cannot do it, we have made the motion, that is all. Maybe the Court of Appeals could if we ask, and maybe they cannot. I do not know.

The Court: Over the Petitioners' objections, I fear it may be construed that I was running counter to the mandate; that I was superimposing my own views over the view of the Court of Appeals. The Court of Appeals has said in effect that this cannot be done properly.

Mr. Brett: Would your Honor have any objection to putting that in your Honor's ruling, that you are overruling that motion to amend upon the ground you feel under the mandate you cannot do so? So if we desire, we can have that phase of it reviewed.

The Court: I am putting it in the order denying it. I feel that the Court of Appeals is wrong in this matter, and that is in the record. The Superior Court does it over here every day, probably many times a day. What the opinion says is impractical and can't be done. Take personal injury cases [15] where minors are involved. Who knows the value of that minor's person injury case? A lawyer goes in there with a petition and says: I am employed by the guardian ad litem to prosecute this personal injury case on behalf of the minor. I have agreed to take 25 per cent of the recovery, whatever it may be. I ask the court to approve that contract as fair and reasonable, and the Superior Court has no trouble apparently doing that all the time.

That is what we attempted to do here. We said:

We do not know what the value of this land is. Without knowing, we will estimate in terms of percentage, instead of terms of dollars, the reasonable value of an attorney's share of whatever may be recovered. And that is what, as I view it, the State court does every day in these minor cases.

Mr. Brett: Your Honor, I think the distinction there, if you will permit the comment, is that ultimately and before the attorney's fee can be fixed, that is, before he has any questions about whether he can enforce it, the total judgment has to be fixed in money. But under the judgment which your Honor rendered there was no way in the world that we could fix that in money to pay up the lien; there was no way to determine it.

The Court: But the personal services in those cases, Mr. Brett, have not only been evaluated in percentage, instead of dollars, but have been evaluated in advance of the rendition, [16] so they have had two hypothetical remedies in those cases.

Mr. Brett: That is true, but the attorney could not collect anything until it has become determined.

The Court: I know, but the court has adjudicated the recovery.

Mr. Brett: Your Honor, I do not understand that we would have had any objection to the percentage if it had not been in the final form of judgment. In other words, we really felt on the adjudication of the first case that we could never erase the lien except by sale, the only settlement would be to sell the property. There was not another way it could have been done. If your Honor had fixed it in

a percentage, and you then also determined that you were going to fix the amount of the value of the property in money, that might have been a different situation. But we had no way to raise that lien. There is no way that we could have gotten determined what the amount is. That in effect is what we are trying to do now. I think it should have been done before, and in that respect Judge Preston is right and I am not critical. It is part of the Government work and we would help with that work within certain circumscribed matters. Otherwise we would have various parts of the country and various counsel going at it various ways.

The Court: It may very well be that the method you suggest would have been permitted. I cannot say, of course. Perhaps [17] you have to have the value of the entire property.

Mr. Brett: That was the phase we had in mind. We just could not figure what way we would have to pay, because we would have to sell the property.

The Court: The same way with these personal injury cases.

Mr. Brett: That is true, but it does not fix itself. In other words, there is nothing the attorney can enforce until he gets a judgment.

The Court: I see your point, that there is no way that could be paid off from other sources, the claim for attorneys' fees. After the judgment is reduced to dollars and cents you could lift the lien.

Mr. Brett: That is right.

The Court: Whereas here, there is no way in

the world to lift that lien until the property was sold, and then it would be too late.

Mr. Brett: Yes, sir. As I understand it then, your Honor, whoever draws the order—and you have not designated who the party will be to draft the order—that you are denying this alternative motion upon the ground that you feel under the mandate you have no authority to do so.

Mr. Preston: I do not see why you should restrict your ruling.

The Court: Over the objection of the moving parties. [18]

Mr. Brett: Yes.

The Court: You may say that.

Mr. Brett: Shall I draw such an order?

The Court: You may prepare an order denying the motion for new trial, without more.

Mr. Brett: I understand. Yes, sir.

The Court: And a further order denying the motion to amend upon the grounds stated.

Mr. Brett: Do you want Judge Preston or me to draw it?

Mr. Preston: You had better draw it.

Mr. Brett: I will draw it.

The Court: And settle it under Local Rule 7.

Mr. Preston: I will object to it then.

[Endorsed]: Filed Aug. 7, 1951. [19]

PETITIONERS' EXHIBIT No. 1

Received Jan. 9, 1941. Mission Agency, Carl Spinner,
Principal Clerk in Charge.

Copy

January 2, 1941

Mr. John W. Dady, Superintendent
Mission Indian Agency
Riverside, California

In re: Lee Arenas

Dear Mr. Dady:

The undersigned hands you herewith an Agreement made and entered into the 20th day of November, 1940, by and between Lee Arenas, a duly enrolled member of the Tribe of Indians known as the Agua Caliente (Palm Springs) Band of Mission Indians of California, Party of the First Part, and David D. Sallee, attorney at law, residing at Los Angeles, California, Party of the Second Part, and which contract has been duly and regularly approved by the Federal Court, on the 20th day of November, 1940, and certified to by the Clerk of the United States District Court under said date.

This contract covers services to be rendered in the case of Lee Arenas against the United States of America, No. 1321-RJ Civil in the District Court of the United States for the Southern District of California.

In accordance with the rules and regulations of the Department of the Interior, will you kindly have said Contract duly and regularly approved by the Department of the Interior, office of the Indian

Affairs, and also by Department of the Interior, Office of the Secretary.

Thanking you for your courtesies in this matter, I remain, yours truly,

DAVID D. SALLEE

DDS:LB

Admitted in evidence 2/10/48.

PETITIONERS' EXHIBIT No. 2

Copy

November 11, 1942

Mr. John W. Dady,
Superintendent Mission Indian Agency
Riverside, California

Dear Mr. Dady:

Quite sometime ago I handed you certain contracts of employment executed by Lee Arenas and approved by Judge McCormick of the United States District Court here in Los Angeles. I took your receipt for same and you informed me that you would forward said contracts to the different channels and have same approved and returned to me. That has not been done. Will you advise me to whom you forwarded those contracts as I want to have that matter completely complete as I am putting the Interior Department and the Indian Department herein notice through this letter that I do not intend to have them come up and question my right to appear in any court regarding this litigation.

Thanking you for your information and awaiting your immediate reply, I remain,

Yours truly,

DAVID D. SALLEE

DDS/ek

Admitted in evidence 2/10/48.

PETITIONERS' EXHIBIT No. 3

Copy

November 16, 1942

Department of the Interior

Indian Office, Washington, D. C.

Re: Lee Arenas vs. U. S. of America

Dear Sir:

On January 10, 1942, there was forwarded to your office by John W. Dady, Superintendent, Mission Indian Agency, in Riverside, California, four copies of a contract entered into by and between Lee Arenas and the undersigned acting as attorney for Lee Arenas. The aforementioned contracts were duly and regularly executed and duly and regularly approved and ratified by Federal Judge Paul McCormick of the United States District Court at Los Angeles and said contracts were further certified to by the United States Clerk's office all according to the rules and regulations provided. To date not one word has been received from any of the different agencies regarding the receipt of the aforementioned contracts which were forwarded to your office for its approval in accordance

with the rules and regulations and only recently have I been able to ascertain what disposition was made of those contracts, and as to final disposition, I have not been informed.

Therefore, will you kindly have same approved and returned to me forthwith as I am putting the Department on notice that they will be estopped to raise a question at any proceeding in the present litigation that I am not a duly and authorized attorney for said Lee Arenas.

Awaiting your immediate reply and thanking you in advance for attention to this matter, I remain, your truly,

DAVID D. SALLEE

DDS/ek

Admitted in evidence 2/10/48.

PETITIONERS' EXHIBIT No. 4

In the District Court of the United States in and
for the Southern District of California,
Central Division

No. 1321—O'C—Civil

LEE ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

INTERROGATIONS

Pursuant to a Stipulation dated January 28, 1948, entered into between petitioners John W. Preston,

Petitioners' Exhibit No. 4—(Continued)

Oliver O. Clark, and David D. Sallee, and respondent United States of America, and Lee Arenas (by United States of America), the following testimony was taken at a conference held in the law offices of John W. Preston, Esq., 712 Rowan Building, Los Angeles, California, on January 28, 1948, at two o'clock p.m., in connection with the above entitled action.

Those present and participating in the conference were: Messrs. John W. Preston, Oliver O. Clark, David D. Sallee, and Irl D. Brett.

Mr. Brett made the following interrogation of Mr. David D. Sallee:

(Judge Preston handed Mr. Brett, in the presence of Messrs. Oliver O. Clark and David D. Sallee, a document entitled "Statement of Facts" in reference to the services performed by them, and each of them, in the case of Lee Arenas vs. United States.)

Q. As I understand it, Mr. Sallee, the Statement of Facts, which has just been handed to me, consisting of eight pages and reciting certain facts respecting your activities as set forth in the Petition upon which the Order to Show Cause is based, may be deemed, for the purpose of the Stipulation, a statement of facts as you would testify to them in connection with what you did as attorney for Lee Arenas in this case? A. Yes.

Q. You have shown me the original of a document which bears the date of November 20, 1940, which recites that it is an agreement between Lee

Petitioners' Exhibit No. 4—(Continued)

Arenas and David D. Sallee. Now, was that document executed in more than one original?

A. Yes; two.

Q. Were both signed and acknowledged in the form in which you have submitted a copy to me?

A. Yes.

Q. Were you present, Mr. Sallee, when Lee Arenas affixed his signature to that document—when he signed both originals?

A. Yes, in the court room of Judge McCormick, before Judge Paul J. McCormick.

Q. Lee Arenas was there?

A. Yes, and on the stand for about two hours.

Q. Was there any transcription of his statements or testimony at that time? A. I doubt it.

Q. Who were present besides Judge McCormick and Lee Arenas and yourself?

A. A man by the name of Collett, who is in Washington at the present time. There were two or three Indians too, I think, but it has been so long ago I can't remember exactly. Eugene Graves was in the court room that afternoon.

Q. Were the clerk and bailiff there?

A. Yes.

Q. How did the proceeding originate, how did you get before Judge McCormick?

A. I don't remember whether the clerk took it in there or whether he let me go in there to see Judge McCormick personally and ask him to make an ex parte matter of it. It was over seven years ago and those details are gone now.

Q. Was any member of Lee Arenas' family present besides himself?

Petitioners' Exhibit No. 4—(Continued)

A. I don't know whether he was married to his present wife at that time or not, I don't think so, but if they were married, she was there. If they were not married, there was no other person there.

Q. It is not contended that there was any legal proceeding then pending in the District Court to which Lee Arenas was a party?

A. No, the suit hadn't been filed. The suit was filed December 20th, and this was November 20th.

Q. My question is this, Mr. Sallee: There was no proceeding in the District Court at Los Angeles that was pending at the time of this hearing before Judge McCormick in which Lee Arenas was a party?

A. This proceeding was had under the procedure of the rules and regulations of the Interior Department and the Indian Department to have a contract validated before a local Judge.

Q. Was it required to comply with Section 2103 of the Revised Statutes?

A. I would have to read it.

Q. I was referring to the one mentioned in the contract.

A. I expect it is, yes.

Q. Before this meeting in Judge McCormick's court room, had you had any conversation with Lee Arenas about the making of this agreement?

A. Yes.

Q. And where did you have this conversation?

A. The first one was in the office, in my office in the Garfield Building, the day he came in and

Petitioners' Exhibit No. 4—(Continued)

asked me to check his case for him, that was the first time I had met him.

Q. Can you fix it with reference to this date, not necessarily the exact date?

A. Just a short time—probably six weeks or thirty days, I can't tell you, I don't just remember.

Q. And at that conference who were present?

A. Just him and myself at the first conference, the second I called Mr. Clark and he came downstairs to my office. We had the same reception room at that time and I buzzed him and he came in.

Q. This second conference was before you went to Judge McCormick with the agreement?

A. Yes. I want to correct what I just said that Mr. Clark was in the same office with me then. I had just moved down into my new quarters a short time, and he came downstairs, that's right.

Q. At this second conference who were present, Mr. Lee Arenas, Mr. Oliver, and yourself?

A. Yes.

Q. Was the conference extended or short?

A. Short.

Q. Would you mind summarizing the gist of the conference?

A. The gist was we would have to get into agreement for a written contract so that we could have the authority to go ahead and represent him, he saying at all times he didn't have money to pay lawyers, that we would have to look to the property to get our pay.

Q. You would have authority—what do you

Petitioners' Exhibit No. 4—(Continued)

mean? Was any mention made in that conversation about regulations of the Government?

A. Presume there was, I couldn't remember that detail now.

Q. You don't remember what representation or mention was made? A. Not specifically.

Q. You were there approximately two hours before Judge McCormick? A. Practically.

Q. Was there a reporter present?

A. I can't remember.

Q. Was there a clerk present? A. Yes.

Q. At the close or conclusion of that session were any documents signed by Mr. Arenas or by you? Or by Judge McCormick? I mean, other than the document consisting of twelve pages, and a copy of which has been furnished to the Government?

A. None other—that is, outside of what the Court might have—these two copies were signed in the court room. Lee Arenas signed, I signed, and then Judge McCormick signed, and I think Mr. Zimmerman signed them.

Q. That is the document that makes up these twelve pages? A. Yes.

Q. Your testimony is, however, that other than those twelve pages, nothing else was signed by either you or Mr. Arenas or the Court that you recall?

A. Not at that time.

Q. Who prepared the document called the "agreement"?

A. I prepared the rough outline, then Oliver

Petitioners' Exhibit No. 4—(Continued)

Clark and I went over it together, and he detailed it, and it was probably edited three or four times before its final form.

Q. Was it ultimately drafted in your office and under your supervision? A. Yes.

Q. Was it discussed with Mr. Arenas before you went with it to Judge McCormick? A. Yes.

Q. Where?

A. I don't remember. The first conference was out at his home under a tree, with Mr. Clark and me. We called on him, or in my office, I don't just remember, we had two or three conferences over the matter. Mr. Clark was in on a couple or three of them, and a couple of them I went over the outline with him myself, explaining it in detail.

Q. Was Mr. Clark present when these conversations took place?

A. Two or three of them, yes.

Q. With reference to the provision that appears on the first page, lines 11 to 16, and which recites that the first party—that would be Mr. Arenas—"hereby contracts with, retains, and employs the party of the second part as attorney in the matters hereinafter mentioned, subject to the approval of the Commissioner of Indian Affairs, and the Secretary of the Interior, pursuant to Section 2103 of the Revised Statutes of the United States of America", what did you state to or explain to Mr. Arenas?

A. I can't give you the details, but the sum and substance was that if I was to do his work I wanted

Petitioners' Exhibit No. 4—(Continued)

a contract executed by him and approved by the Court, whereby fees could be obtained later on if and when litigation turned favorable to him, that's the gist of it.

Q. Did you or did you not tell him that the agreement would not be effective until it was approved by the Commissioner of Indian Affairs or until it was approved by the Secretary of the Interior?

A. I told him I would send the contract in to be approved, which I did after the Court had approved it here.

Q. Yes, Mr. Sallee, but did you tell him that it would not become effective until approved by the Commissioner of Indian Affairs or the Secretary of the Interior?

A. I didn't tell him, because in my opinion it was effective all the way through.

Q. Is it your recollection that, at the hearing before Judge McCormick, that particular clause was referred to either in interrogating Mr. Arenas or in speaking to the Court, or making representations to the Court, or answers to questions of the Court?

A. I didn't go into details of the contract, but Judge McCormick took the contract and read it paragraph by paragraph and interrogated Mr. Arenas himself.

Q. Mr. Clark was not present?

A. No, he was in a trial and couldn't be there.

Petitioners' Exhibit No. 4—(Continued)

Q. And Judge Preston wasn't associated in the case then? A. No.

Q. Was there any reason why you were the only one who was named? I mean, was there any reason expressed by you or Mr. Arenas or by Mr. Clark, or anyone else, as to why you were the only party——

A. The only explanation is this: Tom Sloan and I had known each other in the past. Tom came down to ask me to be associated with him in the Ste. Marie case, that was the first time Oliver knew anything about the Indian case. Tom told the Indians out there that I was to be associated with him, and when Lee later came into the office that was the first time I met him after I had been out there interviewing the other Indians at the request of Tom Sloan. Lee Arenas said to me: "I have been wanting to meet you. Me hear lot about you. Me want you my lawyer. Me want you file my case for allotment." I said: "All right, I will do it." I don't remember whether Mr. Clark—if I called him and he came in at the first conference or not, I doubt it, but the next conference he was in on. But at the request of Mr. Clark he told me "you take that contract in your name, it would be easier for you to handle all the details here because you won't have to hunt me up for signatures, but you have the power of your associates anyway, you take the contract in your own name."

Q. Going back to the hearing before Judge McCormick—so far as your recollection serves you,

Petitioners' Exhibit No. 4—(Continued)

having in mind it has been quite a while, did Judge McCormick interrogate you or Lee with respect to the paragraph which is the second paragraph of the agreement, and which refers it to being subject to the approval of the Commissioner of Indian Affairs and the Secretary of the Interior pursuant to Section 2103 of the Revised Statutes?

A. I don't remember any specific questions at this time.

Q. Between the 20th of November, 1940 and 1st of February, 1945, were there any other writings which were executed by Mr. Lee Arenas and you, or Mr. Lee Arenas and you and Mr. Oliver O. Clark, or Lee Arenas and you and Mr. Oliver O. Clark and Judge Preston which were in the nature of agreements for employment, as distinguished from correspondence or checks or remittances or bills?

A. On February 1, 1945 the modified contract was signed.

(Judge Preston: The question is between the time——)

A. Between the time, no.

Q. I note that the duplicate original, which Judge Preston has handed me, as well as the copy which was furnished to me, discloses the affixation of a stamp of the Office of Indian Affairs on page 1 between lines 8 and 11, which reads: "Office of Indian Affairs, received January 14, 1941", and there is also impressed in heavier type the numbers 2520. So far as you know, was both that stamp and

Petitioners' Exhibit No. 4—(Continued)
number impressed by the Office of Indian Affairs?

A. So far as I know.

Q. Prior to that date was one of these documents, or more of them, mailed to any official of the United States Government?

A. On January 2, 1941, I handed to Carl Spinner, Principal Clerk in Charge, at the Riverside Agency, a letter, together with three of these copies, all executed by Lee Arenas, and all executed by Judge McCormick, and attested by the clerk, and signed by me.

Q. Do you have in your hands a copy of the communication? A. Yes.

Q. I note that this carbon copy of letter dated January 2, 1941, is addressed to Mr. John W. Dady, Superintendent, Mission Agency, Riverside, California, and said in re Lee Arenas, etc., and has a stamp mark "Received January 9, 1941, Mission Agency", with the signature of Carl Spinner, and stamped "Carl Spinner, Principal Clerk in Charge". The receipt stamp, together with Mr. Spinner's signature, was affixed in that office in your presence? A. Yes.

Q. Will you undertake to have some copies made, please, for the purpose of this matter, noted as Exhibit 1? A. Yes.

Q. Now, Mr. Sallee, between November 20, 1940 and January 9, 1941, which was the date of the receipt of the letter of January 2, 1941, which we have just marked Exhibit 1, were there any other letters or other form of writings executed by you,

Petitioners' Exhibit No. 4—(Continued)

or to your knowledge by Mr. Clark or anyone else as your associate, directed to any official of the United States Government in respect to this agreement of November 20, 1940?

A. Not that I remember right now.

Q. Did you receive any communication in writing from any representative of the United States Government in response to the letter of January 2, 1941, and with relation to the document designated "Agreement" and dated November 20, 1940?

A. Yes.

Q. Do you have that?

A. No, I would have to locate it.

Q. Without precisely fixing it, can you state approximately how long after January 9, 1941 you received the communication and from whom?

A. Probably a year or so, because I had from time to time asked Mr. Dady if he had heard anything, and he said "no", and on November 11, 1942, I addressed a letter to him, and on November 16, 1942 I sent another letter to him about it. It was some time later that—I can't say how long—that I received a letter from Washington relative to it, and I have endeavored to find that letter, but have been unable to find it to date.

Q. As I recall your statements, it would have been after November 16, 1942? A. Yes.

Q. Do you recall from whom you received the communication?

A. It was one of the officials in the Department.

Petitioners' Exhibit No. 4—(Continued)

Q. The Department of the Interior, Indian Affairs?

A. Yes, Indian Affairs I think, the department that handles contracts.

Q. Do you recall, generally, the contents of the communication?

A. Just the substance. That they had refused to accept my contract at this time, stating that this litigation was on and that if favorable, the contract was good against Lee Arenas anyway. However, as I remember, it was not an absolutely flat denial, except in substance "we can't approve it" and went on and stated that it was a one-page letter or page-and-a-half, I can't just remember exactly.

Q. You have stated that prior to your receipt of that communication, the substance of which you have just given to the best of your recollection, you had delivered or mailed to Mr. Dady two other communications. Do you have carbon copies of them?

A. Yes.

Q. Mr. Sallee, you have shown me a carbon copy of a communication dated November 11, 1942 to Mr. John W. Dady, Superintendent of the Indian Agency at Riverside, the original of which you delivered to Mr. Dady. You have also shown me a copy of a letter addressed to the Department of the Interior, Office of Indian Affairs, dated November 16, 1942, Washington, D. C., in re Lee Arenas vs. United States of America, and that communication was mailed through the United States mails to that office?

A. Yes.

Petitioners' Exhibit No. 4—(Continued)

Q. May these be annexed as exhibits, Exhibits 2 and 3 please? A. Yes.

Q. Mr. Sallee, when you received this reply that you have roughly described, did you communicate its contents to Mr. Clark? A. Yes.

Q. Did you communicate its contents to Judge Preston at any time?

A. At that time he wasn't in the case. I don't know whether I told him they had been turned down or not.

Q. I have written to the Department to see if they could dig up for me the originals or copies of certain correspondence. I am assuming that they will dig up this communication. May it be stipulated between us that if I get it in time I will submit it to Mr. Sallee, and it may then be incorporated in lieu of his oral statement after he has identified it?

A. Yes. One further statement. As I remember, in that letter, it was a letter subsequent to that, they retained one copy there for their records. They do have one of these copies there.

Q. Following the receipt of that communication and prior to the time that you received the three duplicate originals from the office of Indian Affairs—they having retained one copy as you have just stated—did you have any further written communications with the Office of Indian Affairs or with any official of the Department of the Interior or any other official of the United States Government in connection with this particular matter and the document dated November 20, 1940?

Petitioners' Exhibit No. 4—(Continued)

A. I can't answer that definitely. I did have some correspondence with one firm of lawyers in Washington relative to it. I am going through my files, getting this in chronological order so that I can give it to you.

Q. Is it the import of your last answer that you attempted to make arrangements with some local representatives in Washington, D. C., to contact one or more Government representatives in connection with this matter?

A. I started out to have someone represent me there so that I would not have to make a trip back there.

Q. You did not obtain that representative?

A. No, that's as far as it went.

Q. Did you have any oral conversation with any representative of the Government in connection with this document dated November 20, 1940, following the receipt of the communication which you have been unable to describe?

A. None other than with Mr. Dady at Riverside.

Q. Approximately when was that with reference to when the documents were returned to you—before or after?

A. Before and after both, because from time to time I would see him, and I would bring up the question.

Q. And what was the gist of the question?

A. What the dickens was the matter that they

Petitioners' Exhibit No. 4—(Continued)

wouldn't come through in a decent way with the approval of those contracts.

Q. What was Mr. Dady's reply?

A. He didn't think we had a good case, that was the sum and substance of it.

Q. Was anybody present besides yourself and Mr. Dady? A. No.

Q. At the time you received the communication, which you have roughly described but have not been able to locate and produce, did you at the same time and with that document receive back the two originals? A. The originals came back later.

Q. Briefly, my question was—when they were returned to you, were they accompanied by any written communication from the Government?

A. Yes. I think a short letter saying "we are returning herewith the two original contracts", something like that.

Q. Do you have the communication in your file?

A. I should have it. I will give it to you. I didn't have a chance to get my things together.

Q. May it be stipulated that if Mr. Sallee can locate it, that a copy may be annexed and marked Exhibit 4 to this statement?

(Mr. Preston: And also to the other communication, the contents of which he has described.)

(Mr. Clark: It is agreeable.)

Q. Mr. Sallee, when Mr. Arenas executed this document dated November 20, 1940, did he deliver to you any monies? A. No.

Q. At any time thereafter and up to the present

Petitioners' Exhibit No. 4—(Continued)

time did Mr. Arenas deliver any monies to you?

A. Different amounts from time to time, yes.

Q. Have you made a practice, Mr. Sallee, of keeping a book record of this account?

A. No.

Q. Have you any form of written form of memoranda or record of amounts which were delivered in your hands either directly by Mr. Arenas, or so far as you were informed, purported to be made by or for Mr. Arenas in connection with this particular case?

A. I am getting, as soon as I can, a statement of those amounts, going over my receipt books and paid bills.

Q. You mean you are having it transcribed?

A. No, I can give you a detailed statement of it, see what it amounts to.

Q. And are you also intending to make a detailed statement, so far as you can, of what amounts you expended from the amounts you received?

A. Yes.

Q. May it be stipulated, gentlemen, that as soon as Mr. Sallee has accomplished that result, that a copy of that statement can be annexed and marked as the next exhibit in order? A. Yes.

Q. Would you have any objection, Mr. Sallee, to making just a short written certification to the best of your recollection and information that these consist of all the amounts expended in behalf of this litigation? I don't know if you are required to do it or not, but——

Petitioners' Exhibit No. 4—(Continued)

A. I reserve that until I get it made up.

Q. If you decide that you are agreeable, may it be added to the exhibits? A. Yes.

Q. So far as you are informed, Mr. Sallee, were any monies obtained or received from Mr. Arenas directly or indirectly, and by indirectly I mean advanced or made available by someone else purporting to act in behalf of Mr. Arenas, to anyone other than yourself in connection with this particular litigation? A. That I don't know.

Q. So far as you know, was any compensation, in any form, either money or any other form, paid to any person other than yourself, up to the present time, by Mr. Arenas, directly or indirectly, aside from advances or costs and expenses which you intend to set forth in your account?

A. Not that I know of, I couldn't tell you what has been done.

Q. Have you received any monetary payment from Mr. Arenas, directly or indirectly, to be applied on account of fees as distinguished from costs and expenses? A. No.

Q. Now, have you ever, at any time, prepared an offer to furnish or submit to Mr. Arenas personally, or to anyone in his behalf, any record of your account in the way of a statement or voucher in respect to the expenses which you incurred and paid?

A. That question has never arisen at any time.

Q. It is stated in the document dated November

Petitioners' Exhibit No. 4—(Continued)

20, 1940, commencing on page 5, line 24, and ending on page 6, line 14:

“It Is Further Understood that in event the Party of the Second Part, or his associates who are actually associated in the litigation and investigation as aforesaid, shall advance any necessary expenses, they shall be reimbursed by the Party of the First Part, from the property recovered, such actual expenses as are strictly necessary or proper in connection with the printing of briefs, court costs for proceedings and other similar matters, and to include such actual and necessary traveling expenses, clerical hire, stenographic expense, and the like as may be properly required for the prosecution of said case, or cases; provided that all such expenditures shall be itemized and verified by the Party of the Second Part, and shall be accompanied by proper vouchers, and shall be only upon the approval of the Secretary of the Interior, or an officer designated by him who shall certify the same.”

Have you at any time prior to the filing of the Petition or at any time subsequent to the filing of the Petition and up to the present moment, prepared any vouchers or other writings setting forth the detail of expenditures made by you, and verified the same and submitted them for approval to the Secretary of the Interior? A. No.

Q. Or submitted them for approval to any other official that the Secretary of the Interior had designated? A. No.

Q. Have you ever requested the Secretary of the

Petitioners' Exhibit No. 4—(Continued)

Interior to designate any official? A. No.

(Mr. Preston: That would be only if you wanted to collect them.)

Q. It is provided in the same document dated November 20, 1940, Mr. Sallee, commencing on page 6, line 15, and ending on page 7, line 13, as follows:

“It Is Further Understood and Agreed by and between the parties of this Agreement, that in event of a misunderstanding as regards the manner in which the compensation to the Party of the Second Part from the Party of the First Part shall be paid; and Trust Patents or receipts have been issued, and in that event the Party of the First Part shall thereupon make application for a removal of restrictions upon sufficient of the premises to be sold, and from the proceeds of said sale or sales to pay said Party of the Second Part; that in event it is not for the best interests of the parties hereto to sell said land, the removal of restrictions shall be applied for upon properties coming to the First Party, as selected by said Second Party, upon the basis of one-tenth of the property—That is to say, Second Party shall select one property that does not exceed ten per cent of the total value of all properties, and that First Party shall select nine properties that do not exceed ninety per cent of the total value of said properties, and continue to make such selections until all property shall have been selected. That the property selected by the Second Party shall then be deeded to said Second Party,

Petitioners' Exhibit No. 4—(Continued)
subject to the approval of the Secretary of the Interior and the Commissioner of Indian Affairs.”

Was that paragraph discussed between you and Mr. Arenas before he signed it? A. Yes.

Q. What did you tell Mr. Arenas?

A. I explained the wording of it, and it was also explained by Judge McCormick to Mr. Arenas.

Q. You at that time, Mr. Sallee, were somewhat well grounded in the Indian law that existed, were you not? A. Just fair.

Q. You had made examinations of the law?

A. Oh, yes.

Q. Had you not discovered that the particular property was covered by express provisions of the Congress so that the restrictions could only be moved by the Department of the Interior.

A. That's right.

Q. Did you so inform Mr. Arenas?

A. Yes.

Q. And you so informed Judge McCormick? In answer to his question?

A. I informed him, and he also made that very same statement.

Q. Has any trust patent been issued as to these lands?

(Mr. Preston: They don't have to. The law says a certified copy of a decree is a trust patent.)

Q. Assuming that Judge Preston's statement is correct, have you made any application in any form in behalf of Lee Arenas for release of restrictions on this property?

Petitioners' Exhibit No. 4—(Continued)

A. Not at the present time.

Q. Have you made any selections of any portion of the properties which were the subject matter of the judgment in this case as at least your anticipated selection? A. No.

Q. Have you requested Lee Arenas to make any such selection?

A. Haven't been able to get to see him lately.

Q. Have you communicated with him in an effort to arrange for such selection?

A. No, not by written communication.

Q. Have you in any manner, either orally or in writing, presented to the Secretary of the Interior or other Commissioner of Indian Affairs, a request for approval of any such selection? A. No.

Q. Have you made any assignment orally or in writing of your interest in this agreement to anyone?

A. Just my associates, that I would give them an interest in it.

Q. That was in writing?

A. No, I walked off and forgot it, I had three copies made.

Q. When were the assignments made?

A. When Judge Preston came into the case, I forget the date, Mr. Clark dictated the assignment.

Q. They were in writing and signed by you and delivered to Mr. Clark and Judge Preston?

A. They were put in a file that Mr. Clark and I had, and not to Judge Preston, because Oliver

Petitioners' Exhibit No. 4—(Continued)

said he had them at one time, he put them in that file.

Q. Were those assignments submitted to either the Commissioner of Indian Affairs or the Secretary of the Interior? A. No.

Q. Were they ever requested to consent thereto?

A. No.

Q. Of course their consent was never obtained?

A. No.

Q. With reference to two documents which I believe are identical in their text and are both dated February 1, 1945, identical with the exception that one is signed by Lee Arenas and the other by Marion Therese Arenas. Judge Preston has furnished me with copies of such documents and has exhibited to me the originals. Who drew up those documents?

A. I started the draft of those, and the same way with the original contract, it was redrafted four, five, or six times by Mr. Clark and myself, and the final draft was his redraft of the one that we had done before that.

Q. Were these documents signed on the day that they were shown, February 1st? A. Yes.

Q. And were you personally present when Lee Arenas and Marion Therese Arenas signed them?

A. I was. And so was Mr. Clark.

Q. Where were they signed?

A. In my office in Los Angeles.

Q. Was Lee present at the same time, and did they sign in each other's presence? A. Yes.

Petitioners' Exhibit No. 4—(Continued)

Q. That was the day following the conclusion of the trial, the second trial, before Judge O'Connor?

A. I don't know—the day following or during the trial.

Q. I think the Statement of Facts shows that that trial was conducted on January 30th and 31st.

A. Let me clarify that one date, since you called my attention to the other. The notary on that is Benton Beckley. Mr. Beckley was at the trial, and whether or not he put his signature on that the day they were actually signed in my office, I do not remember. I know I handed them to him to be notarized. The four of us were sitting there, Mr. Clark, Mr. Arenas, Benton Beckley, and myself. We were all in my office and we had discussed with Lee before that the provisions of this modified contract and the reasons why, and he had agreed to it. That was done some little time before that. Mr. Clark had been quite emphatic in getting all of those details before Mr. Arenas' attention so that he would thoroughly understand it, and the reason why we were asking for a larger percentage, and after it was all explained to Arenas he was perfectly satisfied and so was Marian Therese Arenas at that time. It might have been signed on February 1st or the day before, I don't remember exactly, and whether my day book will show that I don't know. The notary might have put that date in there himself, I don't know. That's the point I want to bring out.

Q. Lee Arenas was present and testified at the trial, and also Marian Therese Arenas?

Petitioners' Exhibit No. 4—(Continued)

A. Yes.

Q. And was Beckley present too? A. Yes.

Q. Did he testify?

A. I don't think so. Benton Beckley had done a lot of work for the Indians and quite a lot for Lee, and whenever they needed him or anything was going on, he was on hand.

Q. Is it your testimony that you were present when these signatures were acknowledged by Benton Beckley?

A. I don't remember if he put his seal on in my presence or not, I know he signed in my presence. I don't remember about the seal.

Q. Now, what conversation did you have with Lee, that you have just referred to, shortly before he and his present wife signed the documents which bear the date February 1, 1945, respecting the reasons for the execution of such documents?

A. Most of that conversation was conducted by Mr. Clark and Mr. Arenas after I had opened the question.

Q. Mr. Clark was present? A. Yes.

Q. Where was the conversation?

A. We had several, some in my office, and I think one or two in Palm Springs.

Q. And in every instance was the present Mrs. Arenas present?

A. I can't swear to that—I can't say whether she was in on all of them at Palm Springs. Some times I would see Lee and she wouldn't be at home, but in my office she was there.

Petitioners' Exhibit No. 4—(Continued)

Q. I assume, Mr. Sallee, that Lee Arenas wouldn't know what quantum meruit meant? Or did you tell him?

A. Yes I did. And so did Mr. Clark.

Q. What did you tell him?

A. The reasonable value for services—that the Court would set the fees accordingly.

Q. I don't like to lead an attorney, but——

A. I am a poor witness, I know.

Q. As a part of that conversation, did you tell him that it was the considered opinion of you gentlemen, in view of what had been done and was needed to be done, that ten per cent would not be a reasonable fee? A. Correct.

Q. Did you tell him what would be a reasonable percentage? A. I did not.

Q. Did Mr. Clark?

A. Not in specific figures, no.

Q. Did Mr. Arenas or his wife ask?

A. No.

Q. Had Judge O'Connor made any statement in the court proceedings of January 30th or 31st, and prior to the time that this document was signed, in which he had announced his conclusion as to what way he would find?

A. Not to my knowledge.

Q. Other than your belief that you had a good cause and such other conclusions as you might draw, you had no definite indication or knowledge how far this matter might go? A. That's right.

Q. You stated a moment ago that Mr. Clark had,

Petitioners' Exhibit No. 4—(Continued)

on several occasions, indicated clearly to Mr. Lee Arenas that the previous arrangements were unsatisfactory in amount, and for that reason you had to have some other arrangement?

A. That's right.

Q. Did Mr. Clark express either in money or percentage, or in any other comparative form, what he and you ever contemplated to be fair and proper as compared to the previous agreement?

A. I never heard him quote a figure. He made the statement: "You know, Lee, we are having to do considerable extra work, and Judge Preston is in the case now, and we have to make arrangements to take care of these fees in a proper way."

Q. Judge Preston conducted the second trial?

A. Yes.

Q. In this particular one-page agreement with Lee Arenas and also the same document with Mrs. Arenas, there is this statement in the last line of the first paragraph thereof: "All to be subject to the rules and regulations of the Department of the Interior." So far as your recollection goes, was any discussion had with Lee respecting that sentence and the import thereof?

A. Not that I remember.

Q. Was this document dated February 1, 1945 ever submitted to any representative of the Government?

A. No.

Q. I take it, then, no request was made for approval or consideration?

A. No.

Petitioners' Exhibit No. 4—(Continued)

Q. And that document was not submitted to any Judge? A. No.

Q. Mr. Sallee, other than the three writings, the one dated November 20, 1940, in which you are named as second party, and which bears the signatures of Lee Arenas and yourself, and the two duplicate documents, each dated February 1, 1945, which are identical except as to the name of the client, one of which was signed by Lee Arenas, and the other by Marian Therese Arenas, were any other writings executed by you and by Lee Arenas covering or purporting to cover an arrangement, contract, or agreement for legal services in connection with this property? A. No.

Q. Mr. Sallee, at the time that you entered into this first instrument or agreement with Mr. Arenas, either immediately on that date or as a part of the surrounding circumstances, did you get similar contracts from other members of the Band and receive compensation from them as a part consideration for this transaction?

A. Referring to November 10th? November 20th? No.

Q. In other words, you did not receive from any other member of this Tribe or from someone in their behalf, any fees or advances in connection with the Lee Arenas case?

A. From time to time contributions towards costs on this, but no fees.

Q. I think that's all, Mr. Sallee.

/s/ DAVID D. SALLEE.

Petitioners' Exhibit No. 4—(Continued)

Interrogation by Mr. Brett of Mr. Oliver
O. Clark

Q. Is there any difference, Mr. Clark, that you can now recall, in what your answers would be in so far as what took place in any conversations in which you participated than as stated by Mr. Sallee?

A. Yes, in several instances. I noted as he testified conversations were had that I recall which he did not testify to, and some things were just a little bit different as he recalled them in so far as my participation is concerned.

Q. With that in mind, I will ask a few questions. When were you first informed about this matter? When did you first take active part?

A. Late June, in the year in which the suit was filed. I think 1940.

Q. And were you introduced to Mr. Arenas by Mr. Sallee?

A. Not at that time. I was later. My best recollection would be during the first two weeks of July.

Q. And where did you first meet Lee Arenas?

A. In Dave Sallee's office.

Q. Were there conversations at that time with Mr. Arenas? A. Yes.

Q. Who were present?

A. Dave Sallee and myself and Lee Arenas.

Q. And the woman who is known as Marian Therese Arenas was not present at that time?

Petitioners' Exhibit No. 4—(Continued)

A. I think not, not until a considerable time later.

(Mr. Sallee: At that time Lee Arenas wasn't married, when we first handled the litigation.)

Q. Mr. Clark, I am not intending to interrogate you concerning the general setup of your work—just as set up in the Statement of Facts—only with matters that concern the ultimate arrangements and execution of the agreement of November 20. I will ask you then: At that particular time was the matter of employment by Mr. Arenas and of the compensation for such employment discussed with Mr. Arenas?

A. As to the employment, yes. Compensation, no.

Q. Will you briefly state your recollection of what was said at that time?

A. Yes. Lee Arenas shook hands with me and said: "Mr. Sallee tell me you help on my case." And I told him that I just beginning to make a study of a great deal of material that they had begun to furnish me, and would furnish to me, and that if, when I had occasion to look more fully into that material, I felt that he had a reasonable chance to win the case, I would then associate with Dave Sallee in the case for him.

Q. I take it then, that, so far as that particular conference was concerned, that is as far as it went with respect to employment?

A. That is true.

Q. When, with reference to the agreement dated

Petitioners' Exhibit No. 4—(Continued)

November 20, 1940, did you next have a conversation with Mr. Arenas?

A. I had several conversations with him, both in Los Angeles and at his home at Palm Springs, about the facts of his case but nothing further as I now recall with reference to compensation until perhaps within a week or so of the time when the first contract was signed.

Q. And that was after the Supreme Court had denied the certiorari, because it was out of time in the Ste. Marie case?

A. I don't remember the instances now in their order, but it seems to me that certiorari was denied in early October, and this contract, as I recall, was executed in November, and we filed our suit in December.

Q. Now, when you had this conversation that was shortly before the document dated November 20, 1940 was executed, where did you have it?

A. The first one at Palm Springs, and the second on the date when the contract was signed in Dave Sallee's office.

Q. With reference to the Palm Springs conference, where was that?

A. At his home, with Dave Sallee, Lee Arenas, and myself.

Q. And will you briefly outline the conversation?

A. I told Lee that I had examined all of the data that had been submitted to me and had rather exhaustively researched the law involved, and had

Petitioners' Exhibit No. 4—(Continued)

also discussed the matter with John Steven McGroarty, who was active in behalf of the Indians, and had determined that I would be willing to accept association with Dave Sallee to bring the suit, and that it would be necessary for us to have some contract in writing with him, Lee Arenas, covering our employment. This was the conversation at Palm Springs, and I told him that it seemed to me that from the information I then had that ten per cent of the amount recovered would probably represent a fair compensation, and that if this met with his approval I would proceed with the preparation of a contract, and he then could come to Sallee's office at Los Angeles for its execution. Subsequently, at Dave's office, I discussed with Lee Arenas and Dave the contract that had been prepared. I do not have any present recollection whether the contract was then signed in Dave's office or whether at a shortly later time it was signed at Palm Springs, but I do remember that I was present when Lee Arenas signed, and I asked him after having read it to him, if he was satisfied with it.

(Judge Preston: Do you think the contract was not signed in the court room?)

A. I am not sure. Frankly, I have in mind that I had drafted a writing that had been signed by Lee Arenas, but that is not the writing that was submitted to Judge McCormick. I was not present when the writing in the form as you have it was signed, because that was in Judge McCormick's office. My recollection is that after this first writing was

Petitioners' Exhibit No. 4—(Continued)

signed by Lee Arenas, Dave stated that he had discussed the matter with Mr. Collett, and that Mr. Collett had suggested that Lee ought to be taken before a Federal Judge, and I told him I had no objection to that. It is my recollection, therefore, that the writing which was signed by Lee, as I have testified, was destroyed, a new writing was prepared, and that was taken by Dave and Mr. Collett to the Federal Court, but I was not present when that happened.

Q. Mr. Clark, having in mind the possibility, in view of your most recent statements, that the document dated November 20, 1940 is not the same document as you saw signed by Lee Arenas——

A. I know it is not.

Q. Were the provisions substantially similar?

A. In substances, yes, but not as I recall all of the recitations about the regulations of the Indian Department and the Interior Department.

Q. Those were added?

A. Yes. The reason I make that statement is because I never had any confidence from the beginning that the Government or any department would ever approve any contract for the employment of any lawyer to file that case, and I told Dave that I wasn't interested in spending one minute of my time on it, but that I had no objection to Dave and Collett doing whatever they thought might be desirable to obtain such a consent, but that as far as I was concerned I was going to base the recovery of my compensation upon my belief that in the cir-

Petitioners' Exhibit No. 4—(Continued)

cumstances of that case, in the event we won, the Court would find that we were entitled to a reasonable compensation for what we accomplished payable out of the property involved.

Q. Mr. Clark, you have several times mentioned a Mr. Collett, and so did Mr. Sallee. It is my recollection that in the various instruments which were offered in evidence in your second trial there were documents which bore the name of some Government official by the name of Collett. Is that the same man?

A. I don't think so. I met this man four or five times and had brief conversations with him, and the man I had in mind was not then a Government agent, he was interested in Indian affairs for a long time, as I was told.

Q. Following the date when you were informed, and you have now learned, that Mr. Arenas and Mr. Sallee appeared before Judge McCormick, were you informed of that fact and of the execution of the document? A. Yes.

Q. Were you informed as to the contents as it had been redrawn? A. Yes, I saw it.

Q. And you then performed whatever services you did under arrangements that you made with Mr. Sallee under that agreement?

A. Until the subsequent agreement was agreed upon.

Q. That is between November 20, 1940 and February 1, 1945, you had no separate arrangement with Mr. Lee Arenas?

Petitioners' Exhibit No. 4—(Continued)

A. I never had any separate arrangement with Lee Arenas, but I did negotiate with him for a change in the basis of our compensation many months before the second writing was executed, and in fact at about the time Judge Preston came into the case.

Q. And that was at the time that the consultations were had which led up to the petition for certiorari in the Supreme Court?

A. That's right.

Q. At that time you had one or more conversations with Lee Arenas?

A. You mean at the time the petition for certiorari was in prospect?

Q. It may be that the time was identical, but I had reference to your earlier statement that you had had a number of negotiations leading up to the second agreement prior to its execution.

A. Yes, and they began at the time when the preparation for certiorari was in prospect.

Q. In connection with those conversations, who were present?

A. Lee Arenas and myself on some of the occasions, and Dave Sallee on others.

Q. And where were they?

A. Some at Palm Springs at the home of Arenas, and others at Dave Sallee's office.

Q. Were any others present besides Lee Arenas, Dave Sallee, and yourself?

A. I have in mind, but indistinctly, that Mrs. Arenas was there on one of the occasions when I

Petitioners' Exhibit No. 4—(Continued)

went to Palm Springs alone. By that I mean without Dave. Then later and before the contracts were signed, Mrs. Arenas was with Lee in Dave's office, and I was there too.

Q. Just so there will be no question about it, Guadaloupe was deceased, and the Mrs. Arenas you now refer to is the one who signed the document on February 1, 1945, Marian Therese Arenas?

A. Yes.

Q. Will you briefly state the gist of these conversations leading up to the new agreement?

A. When it became necessary to petition the United States Supreme Court, I went to Palm Springs and talked with Lee. I told him that it would be necessary for me and Dave to go to Washington and be admitted to the Supreme Court before we could file a petition for certiorari, but that I felt, in view of the importance of the litigation and its then condition, that it would be very much to his advantage to employ another lawyer who had had experience in practice in the United States Supreme Court, and that I had spoken to Judge Preston, who had formerly served in the State Supreme Court on the bench and who had also served the Government in several important capacities, and that I had come to recommend to him that Judge Preston be employed in association with Dave and myself for the purpose of the petition to the United States Supreme Court and the conduct of the case thereafter if we won in that court. I told him that this would, of course, mean the payment of addi-

Petitioners' Exhibit No. 4—(Continued)

tional compensation to the lawyers, and that I had not discussed with Judge Preston what his fee would be, but if the plan met with Lee's approval I would do that and talk with him further. Lee told me that he would be very glad for that to be done and for me to go ahead. I then returned to Los Angeles and presented the matter in detail to Judge Preston, and as I recall, a period of at least two weeks elapsed, because Judge Preston was rather reluctant to engage in the litigation, but I continued to press the matter. He made a trip to the North and upon his return called me and said that he would be willing to be associated in the case. I then contacted Lee Arenas. It is my impression that Dave had called him to Dave's office and that Dave was present on this occasion. At the time I made this report I told Lee that Judge Preston had agreed to the association and that it would be necessary to prepare an additional contract covering our compensation, but that we were so busy in doing the things that had to be done in the case because we were working under a time limit, that I would not undertake to prepare that contract until other things had been attended to, but that when I did prepare the contract it would be upon the basis of a reasonable fee for the work done, having in mind what should be accomplished in event we won it, and the fee to be fixed by the United States District Court here, and I explained that to him in detail as to how it was fair, I thought, to us and fair to him, so that the Court knew exactly what the

Petitioners' Exhibit No. 4—(Continued)

picture was and the Court then could say what was a reasonable fee to us and what was reasonable for Lee to pay. He told me it was perfectly fair and to go ahead and let him know when I wanted the new contract signed. The matter went on for a long time before I got around to the drafting of the contract with Dave, and then it eventuated into the signing of the later and last contract. When that contract was signed I read it to Lee and explained it to him, reminded him of the conversation that we had had before in reference to it, and Lee in substance said it was acceptable to him, and it was signed.

Q. When you contacted Judge Preston did you relate to Judge Preston, in substance, the representations and statements that you had made to Mr. Arenas, such as you have just stated?

A. I did relate to Judge Preston what I had
I [Mathes, J]
said to Lee, and ~~Lee said he~~ had contacted Judge Preston before I suggested him to Lee.

Q. Before Judge Preston accepted employment you related to him, in substance, the statements you have just related? A. I did.

Q. Did you also disclose to Judge Preston the text of the agreement of November 20, 1940?

A. My recollection is that I brought a copy to Judge Preston's office.

Q. And left it with him, before Judge Preston entered into the employment of the case?

A. Yes.

Q. At the time you commenced these conversa-

Petitioners' Exhibit No. 4—(Continued)

tions with Mr. Arenas looking toward a modification of the agreement of November 20, 1940, had you helped perform any legal services as counsel for Mr. Arenas in this case?

A. Yes. I had begun the suit and carried it through the Circuit Court and to the point where the petition for certiorari was required to be filed before I discussed with Lee the modification of the original contract.

Q. Did you suggest to Lee Arenas that he obtain or seek or get the advice of any independent counsel before he modify the agreement?

A. No, I did not. I did suggest to him that he discuss the matter with the local Indian agent, whose name I now forget, at Palm Springs.

Q. Mr. Veith? V-e-i-t-h?

A. Yes, I believe that is the name. I had met him and heard of him and had every confidence in him, esteemed him very highly, and knew he was a friend of the Indians, and I asked Lee to talk to him about the advisability of doing the thing I had suggested.

Q. You knew Mr. Veith was not a lawyer, or did you believe at the time that he was?

A. No. That never occurred to me. I was thinking of him as a friend of the Indians and a man of such responsibility that the Government had made him the local Indian agent.

Q. Mr. Clark, so far as your knowledge serves you, do you know whether or not Mr. Lee Arenas obtained or sought any independent advice before

Petitioners' Exhibit No. 4—(Continued)

he accepted your suggestions and signed the agreement of February 1, 1945?

A. That question calls for hearsay, but I can say this as to what I understood. I understood from John Steven McGroarty that he and some woman active in behalf of the Indians, had discussed with Lee Arenas and other Indians at the town of Palm Springs the possibility of doing the very thing that

Judge Preston and I suggested, namely, bringing in ~~John Steven McGroarty~~ Mr. McGroarty [Mathes, J]

~~Groarty~~, between the time I first spoke to Judge Preston and the time when Lee Arenas finally told me to go ahead, called me to his home one evening and said to me that he thought the idea was one of the most brilliant things that had been suggested in the course of the litigation, and that he had talked with this woman, whose name I don't remember, but I can get it, and that Lee was satisfied and he knew that this was what was going to be done. I do remember at a later time I talked with Mr. Berry, the local agent, about it, and he congratulated me upon the fact that I had thought of doing it, and had been able to do it, namely, to get Judge Preston into the case.

Q. Did you tell Mr. Arenas, as a part of your conversation leading up to the signing of the documents dated February 1, 1945, that it was necessary for him to sign an agreement of that kind before further proceedings could be had in his case?

A. No. Our relations were such that if Lee

Petitioners' Exhibit No. 4—(Continued)

Arenas told me to go ahead on the basis of our oral understanding, it was just as good as if it was in writing, and the fact that that contract wasn't signed until after we had gone through the United States Supreme Court and had come back here for the trial of the case——

Q. Did you tell Mr. Lee Arenas in any of the conversations following the effective date of November 20, 1940 and prior to February 1, 1945, that you could go no further with his case after the Circuit Court of Appeals had affirmed the summary judgment unless he would execute an agreement covering a larger fee? A. No.

Q. What did you tell him in that respect?

A. I told him I thought it was advisable that Judge Preston be associated in the case, but that if he did not agree to it I would go to Washington and become admitted to the Supreme Court and file the petition while I was there, because I at all times had in mind that if Judge Preston would not become associated I would go ahead with the litigation through the Supreme Court.

Q. Did you contemplate that if you had gone through with the litigation to the Supreme Court and had obtained a reversal of the Circuit Court opinion that you would conduct further proceedings in whatever courts might be required until the trust patent was obtained?

A. I did. In other words, I assume you want to know if I at any time suggested to Arenas that if I and Dave would go ahead without any additional

Petitioners' Exhibit No. 4—(Continued)

lawyer, we would expect any compensation in addition to what our original contract provided for. No, I never had that in mind. I never suggested it to Arenas and the only reason the new contract for compensation was made was because of the additional services that we were able to obtain from Judge Preston being in the case.

Q. Did you personally receive any monies in the way of fees, either directly or indirectly, from Lee Arenas for costs and expenses in the case?

A. Only through Dave Sallee, and not then to the extent of what expenses I incurred.

Q. Do you keep books of account on your cases?

A. Not on that case. My fee was entirely contingent. The only expenses I received was when we went back to Washington to argue the case in the Supreme Court. Dave gave me the money for that, and then again when we went to San Francisco to argue the matter in the Circuit Court on the Government's Appeal he gave me the expense money for that.

Q. You refer to Judge Preston and yourself?

A. Yes. Otherwise Dave handled the payment of expenses, not I.

Q. You don't know, then, from what source the money came?

A. No, excepting as Dave told me, and the Indians told me contributions were made in part by Lee Arenas and his wife, and in part by some of the other Indians.

Q. Did you ever present either the agreement

Petitioners' Exhibit No. 4—(Continued)

of November 20, 1940 or the agreement, or either of them, of February 1, 1945, or any other writings which were directed to, and the contents of which evidenced some form of negotiations or agreement for your employment as counsel with Lee Arenas, to any representative of the Federal Government?

A. No.

Q. You never obtained any approval?

A. None whatever.

Q. Aside from the document dated February 20, 1940 and the two documents dated February 1, 1945, were there any writings which you know of which were executed by Lee Arenas and which you purport to have acted under as employment contracts?

A. None except the first, which was only effective at most for a few days and torn up, and superseded by the one presented to Judge McCormick.

Q. And that was done with Mr. Arenas' consent?

A. Yes.

Q. Did you have any personal written communications in connection with either of these agreements or contracts or in connection with your employment or activities in behalf of Lee Arenas, with any representative of the Federal Government?

A. None whatever.

Q. Have you ever submitted a statement, account, or any other form, of rendering of a voucher or claim, for your services in this case to any representative of the Federal Government aside from the joining in the petition? A. No.

Q. Have you ever received, either orally or in

Petitioners' Exhibit No. 4—(Continued)

writing, any communication from any representative of the Federal Government which either expressly or impliedly informed you not to make any such application or to render any such statement?

A. No.

Q. Were you present when Mr. and Mrs. Arenas signed the documents dated February 1, 1945?

A. Yes.

Q. Where did they sign them?

A. In Dave Sallee's office.

Q. Were both of them present at the time they were signed—did they sign in each other's presence?

A. Yes.

Q. Was Mr. Benton Beckley present?

A. My recollection is that he was. He seems to me to be the one who came to my office and said Lee Arenas and his wife are down there waiting for me.

Q. Do you know definitely the date on which they signed was February 1, 1945?

A. No, I have absolutely no recollection of that.

Q. Did you see any formal acknowledgment of their signature before the notary?

A. I have absolutely no recollection of that.

Q. Did you have knowledge, either by communication from Mr. Sallee orally, or by being disclosed to you through the writings, that the document dated November 20, 1940, had been submitted to the Office of Indian Affairs?

A. Yes, I did.

Q. And were you likewise informed that at some date, not definitely fixed here but approximately in 1942, the United States, through the Office of In-

Petitioners' Exhibit No. 4—(Continued)
 dian Affairs, had refused or declined to approve the contract?

A. I was told by Dave Sallee and shown the letter that they had refused to take action upon them, and had returned the contracts.

Q. Did you communicate with Judge Preston?

A. I don't remember.

Q. I think that's all, Mr. Clark.

/s/ OLIVER O. CLARK

Interrogation by Mr. Brett of Mr.
 John W. Preston

Q. As I understand it, the first time you came into the matter was when your services were solicited by Mr. Clark?

A. That's right.

Q. And that at that particular time did you meet Lee Arenas, or was it at a later period?

A. Much later I think.

Q. You have heard Mr. Clark's statements that have just been made? A. Yes I have.

Q. Would you add to or change any of those statements?

A. I have nothing to add. Some I recall, and some I don't.

Q. We made provision here that if there are to be any corrections, they will be made, and if—

A. The Statement of Facts that I have delivered to you contains a recitation in brief of my activities in the case, giving days and dates, etc. I started in September 1943.

Petitioners' Exhibit No. 4—(Continued)

Q. At the time that you started in that employment in 1943, you were informed of the provisions of the document dated November 20, 1940?

A. Well, I have a reasonably good memory that I knew something about it—that they had a contract, and for ten per cent, and that I didn't think it was enough, I remember that.

Q. Do you recall whether you personally told Lee Arenas that you didn't think it was enough before you started in on your employment?

A. I didn't do that.

Q. I have in mind the document dated February 1, 1945 was after you had performed substantial portions of your services?

A. You are right. I don't think I had any personal talk with Lee Arenas or that I informed him of anything.

Q. Whatever information he had came through others?

A. Yes; that's right.

Q. You were not present when the documents dated February 1, 1945 were signed?

A. I was not.

(Mr. Brett: Mr. Clark, who prepared the documents dated November 20, 1940, the ultimate documents?

Mr. Clark: I think I did.

Mr. Brett: The one presented to Judge McCormick?

Mr. Clark: No, I think some changes were made by Dave and then a Mr. Collett, after the signing of the one we had prepared.

Petitioners' Exhibit No. 4—(Continued)

Mr. Brett: You don't know, definitely, Mr. Clark, of your own knowledge, who prepared the document dated November 20, 1940?

Mr. Clark: In the form as signed by Judge McCormick, no.

Mr. Brett: Mr. Clark, who prepared the documents which are identical except as to the names of the clients, the documents dated February 1, 1945?

Mr. Clark: I did.)

Q. Now, Judge Preston, did you ever, either orally or in writing, submit either of these contracts or agreements dated November 20, 1940 or February 1, 1945, respectively, to any representative of the Federal Government? A. I did not.

Q. Did you orally, or in writing, submit any statement, voucher, or other form of claim, to any representative of the Federal Government? As a claim for either repayment of expenses or payment of fees?

A. I have made no claim to the Government asking either for expenses or for compensation.

Q. Is there any written document existent of which you have knowledge and in which you participated as a party or under which you claimed to have been employed and to have performed services for Lee Arenas, other than the document dated November 20, 1940 and the two documents dated February 1, 1945? A. I know of none other.

Q. You have submitted to me, I take it in view of what you have said, a two-page communication dated January 2, 1948, which is headed "Statement of Account, etc." and which contains a number of

Petitioners' Exhibit No. 4—(Continued)

entries indicating dates, the general character of the expenditures or receipts, in two columns, the left-hand of which apparently is a matter of receipts, and the righthand a matter of disbursements—is that an accurate statement and record of your book account?

A. It is supposed to be a correct transcript of my records.

Q. Does it constitute all of the monies received and expended by you in connection with this particular litigation? A. Yes.

Q. And from whom did you receive the various receipts?

A. The amounts I received were usually, and I think almost entirely, from Mr. Sallee direct, with the possible exception of one item. I think the item dated June 15, 1946, for printing brief on appeal, \$86.20, was paid to me direct by Mrs. Arenas when she appeared in this office, accompanied by three or four other Indians, and I gathered the impression that the other Indians had contributed certain portions of that sum. Other than that, all receipts were from Mr. Sallee, as I recall it.

Q. Incidentally, I note that I inadvertently erred in describing the document. Your disbursements appear in the lefthand column, and your receipts in the righthand. You referred to the item of June 17 rather than June 14—the printing of the brief on appeal? A. That's right.

Q. And without going into further detail, each and every item as set forth as an expenditure is the

Petitioners' Exhibit No. 4—(Continued)

actual amount you spent in connection with this case? A. Yes.

Q. And was necessary in the performance of your duties in prosecuting the case? A. Yes.

Q. May it be stipulated that a copy of this statement may be made an exhibit?

A. Yes, exhibit to my statement.

Q. Had you ever suggested to Mr. Arenas, Judge Preston, that he seek independent advice before he modified his contract of November 20, 1940 and prior to the time when he signed the documents dated February 1, 1945?

A. I had no direct communication with Mr. Arenas on that.

Q. You had talked to him on other matters in the case, because you tried the case before that date, didn't you?

A. I was at Mr. Arenas' house in Palm Springs once, and I examined Mr. Arenas as a witness at the time of the trial. I had a few talks with him in the corridor of the court room, and I don't remember ever talking to him any other time.

Q. I assume you talked to him before you put him on the stand?

A. That's my custom to talk to a witness first, but I swear I don't remember talking to him.

Q. I wasn't present at the trial. Judge Preston, you have had broad experience both on the bench and as an attorney—now, having in mind Mr. Sallee's previous statements and Mr. Clark's previous statements as to what they told Mr. Arenas, is it

Petitioners' Exhibit No. 4—(Continued)

your opinion that Mr. Arenas was sufficiently informed of English and sufficiently educated to understand and comprehend the information and advice which he was being given?

A. I certainly think he was competent at that time to transact business—as competent as the ordinary individual of the White Race. He showed on the witness stand intelligence that was very noticeable—he was commended by the Judge as being an intelligent witness—and if you will recall, the contract is simply a quantum merit to be fixed by the court. It doesn't require a great deal of advice to make such a contract, and I think also it is valid under the law.

Q. Did you ever, at any time, discuss with Mr. Arenas, in connection with either of these documents, the one dated November 20, 1940, and the one dated February 1, 1945, the references therein made to the documents being subject to actions by the Federal Government through the Department of the Interior or Office of Indian Affairs?

A. No, not on either of them, at any time.

Q. These are the only two agreements you are relying on? A. Yes.

Q. And you had no written communications with any Government official in connection with either your employment or the payment of your fees or any of the details in connection with your services?

A. I very early got hold of the Barnett decision,

Petitioners' Exhibit No. 4—(Continued)
and my course of conduct was guided by that
decision.

Q. That's all, Judge. Thank you.

/s/ JOHN W. PRESTON

Admitted in evidence 2/10/48.

[Endorsed]: Filed Feb. 10, 1948.

PETITIONERS' EXHIBIT No. 4-A

In the District Court of the United States, Southern
District of California, Central Division

No. 1321—O'C—Civil

LEE ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

STATEMENT OF FACTS

Preliminary Work

Petitioners Clark and Sallee did the preliminary work looking to filing of the Complaint and in fact handled the litigation from July 1940 until September 1943. Prior to the filing of the action and during the months of July, August, September and October, 1940, these counsels spent approximately 40 days in the study of the voluminous records and other data available, including, of course, the legal

Petitioners' Exhibit No. 4-A—(Continued)

questions involved in the contemplated suit. At least four trips were made to Palm Springs in connection with the matter and three visits to the bedside of Mr. Sloan, an attorney who had handled much Indian litigation and was the leading counsel in the so-called St. Marie case. During this period the following events had occurred: About July 1938 eighteen of these Palm Springs Indians, a majority of the twenty-four Indians who had received allotments under the 1927 proceedings, began an action in this Court entitled, "St. Marie et al vs. United States", which had for its object the identical relief Lee Arenas has secured in the present action. On the 23rd day of July, 1938 this Court, the Honorable Leon R. Yankwich presiding, denied in toto the claims of these eighteen Indians (24 Sup. 237). An appeal was taken to the Circuit Court of Appeals, Ninth Circuit, where on the third day of January, 1940 this judgment was affirmed (108 Fed. 2d 876). Certiorari was sought from the Supreme Court. This was denied on October 4, 1940. This Petition, however, did not settle the legal questions, because it was denied on the ground that it had been filed one day too late. This was the situation that confronted counsel for Lee Arenas on December 24, 1940 when this action was begun. The United States was a determined adversary during the pendency of the St. Marie case and continued to be such throughout the pendency of this cause, and still is a determined and persistent adversary.

Petitioners' Exhibit No. 4-A—(Continued)

Chronology of the Present Action

This action was instituted by Lee Arenas on the 24th day of December, 1940. The United States was made defendant pursuant to the Act of August 15, 1894 (25 U.S.C.A. Sec. 345), which said statute authorized any person of Indian blood who claimed an allotment under any Act of Congress to have the validity of his claim declared by a judgment of the District Court.

The Agua Caliente or Palm Springs Band of Mission Indians claimed their rights to allotments by virtue of the acts and proceedings taken by a duly appointed Allotting Agent, who first made a series of allotments to each Indian of the Tribe on June 21, 1923, and later made a reallotment to a part of them only on May 9, 1927.

This action was taken pursuant to the provisions of the Act of June 12, 1891, (26 Stat. 712-14) amended by the Act of June 25, 1910, (36 Stat. 855-863) and the Act of March 2, 1917 (39 Stat. 976). The 1923 allotment proceedings included all of the Band of fifty Indians. These proceedings were nullified because allotments were not made at the special instance and request of the individual Indians.

The proceedings in 1927 were taken pursuant to the written request of twenty-four Indians of the said Tribe. Lee Arenas and Guadalupe Arenas, his wife, were included in both the 1923 and the 1927 allotment proceedings. Francisco Arenas, father of Lee Arenas, died October 4, 1924, and Lee's brother

Petitioners' Exhibit No. 4-A—(Continued)

Simon, died February 18, 1925. The deceased Indians were named in both the 1923 and the 1927 allotment proceedings. Because of their death prior to May 9, 1927, their allotments were adjudged invalid. Guadaloupe Arenas was also dead at the time this action was begun, but she was alive on May 9, 1927.

Perilous Course of the Present Cause

The action was instituted December 24, 1940. A first and second amended complaint was filed in the action in the year 1941, the latter being a document of seventy-two paragraphs, forty-eight printed pages, filed October 27, 1941. Motions to dismiss or, in the alternative (two in number) summary judgments were made by the United States supported by two affidavits and a certificate of the acting Commissioner of Indian Affairs. The motions were heard on the 26th day of January, 1942, and Summary judgment was granted on March 6, 1942.

In preparation of the three complaints and the resisting of these motions Messrs. Clark and Sallee performed much research and made many court appearances. The time spent by these two counsel is estimated at four days in Court and five days in office research and preparation of documents.

On June 3, 1942 an appeal taken from the summary judgment entered on March 6, 1942, on which a record was prepared consisting of 69 pages, became action No. 10219 of the records of the Circuit Court of Appeals, Ninth Circuit.

An Opening Brief of 45 pages with an appendix

Petitioners' Exhibit No. 4-A—(Continued)

of six pages was prepared and filed on December 16, 1942. The United States responded with a brief consisting solely of a reliance upon decision in the St. Marie cases above referred to (*supra* p. 2). Appellant replied with a brief of seven pages.

The cause was orally argued March 8, 1942. The judgment of the Court below was affirmed by opinion and judgment filed June 30, 1943. (See 137 F. 2d 199). Appellant duly filed on July 23, 1943 his Petition for a rehearing consisting of three pages which Petition was denied on August 4, 1943. Messrs. Clark and Sallee consumed approximately 10 days in office preparation of the appeal and one day in oral argument before the Circuit Court of Appeals.

On September 7, 1943 John W. Preston became one of the counsel of record for Lee Arenas. A transcript of record was then prepared to accompany a petition to the Supreme Court for certiorari, consisting of 78 pages. The whole subject of allotments was then reexamined in the office of John W. Preston, both by him and other members of his staff, during which approximately 15 days were spent in research. The result of said labor was the Petition for Certiorari which was filed October 29, 1943. This document, including a short appendix, covered 23 pages. The United States filed a brief of nine pages in opposition to this Petition. The Petition was granted on the 20th day of December, 1943 by the Supreme Court. On February 25, 1944, counsel for Arenas prepared and filed a supplemental brief

Petitioners' Exhibit No. 4-A—(Continued)
consisting of 25 pages, which was a careful examination of the statutes and decisions upon the subject of Indian allotments.

In the preparation of the Petition for Certiorari and the Supplemental Brief, John W. Preston and the members of his staff consumed approximately 15 days.

On March the 6th and 7th, 1944 Messrs. Preston and Clark attended a hearing of the cause before the Supreme Court in Washington, D. C., and on said days argued said cause before said Court. They also spent one day in searching records in the General Land Office and in the office of the Solicitor of the Department of the Interior.

On May 22, 1944, the Supreme Court of the United States rendered its opinion and judgment reversing the judgment below and remanded the cause for a trial on merits (322 U.S. 419, 64 S. Ct. 1090, 88 L.Ed. 1363).

On the 27th day of June, 1944, Mandate duly issued to the District Court of the United States for the Southern District of California and it was spread on the records of said District Court on the 12th day of September 1944. During the period from September 1943 to September 1944, Petitioners Clark and Sallee estimated their time at legal work, including travel time to Washington, D. C., and Palm Springs at approximately 50 days.

Thereupon, Petitioners prepared a Third Amended Complaint in the action to conform to the rulings of the Supreme Court. The same was duly filed on

Petitioners' Exhibit No. 4-A—(Continued)
the 9th day of January, 1945, and consisted of 22 printed pages and four causes of action. On the 15th day of January, 1945, the United States filed its Answer to said complaint which consisted of three defenses to each count of the complaint and covered 16 printed pages.

In a restudy of the cause following the reversal of the judgment and in the preparation of the Third Amended Complaint all counsel utilized approximately 20 days of office work.

Elaborate preparation for trial of the cause preceded January 9, 1945. This preparation included further examination of the law and the securing of witnesses particularly the last witness, Harry E. Wadsworth, the Alloting Agent then a man of more than eighty years of age.

On January 9, 1945, the trial Judge made an order on pretrial and a supplemental order on January 15, 1945. Under these pre-trial orders counsel for the respective parties spent approximately five days in the consideration of matters that could be stipulated to. Twenty-seven different items of fact and exhibits that could be introduced in evidence were stipulated and on January 15, 1945 we represented to the Court that further stipulations would be made and the supplemental order resulted.

Under the supplemental order the parties agreed upon some 30 additional items and reported same to the Court on January 30, 1945.

Petitioners' Exhibit No. 4-A—(Continued)

The cause was tried in two days, January 30th and 31st, 1945.

In addition to the matter admitted in evidence under the pre-trial orders, there was received 49 exhibits styled Court exhibits and exhibits "A" to "F", inclusive, were accepted for the defendant. The exhibit styled "F" was a document containing a discussion of the Mission Indian problems from 1891 to date and it had as a sub-exhibit, 107 pieces of writing. This exhibit contains 300 pages of the record, Vol. 2, pp. 300 to 603. Only four witnesses gave oral testimony. When the evidence was concluded the trial judge made the following observation:

"I will make first some remarks. I am inclined to say I have never had a better presented case from the standpoint of the facts, particularly, because you attorneys on both sides very sensibly got together and agreed on these exhibits, which has saved the Court a great deal of time. Very commendable. It shows the efficacy of the pre-trial, of which there was some little hesitancy about receiving on the part of the older practitioners, and I might say myself, a hesitancy to accept any innovations in trial work when we have been long years accustomed to one procedure. I think counsel on both sides will see that it had worked out very well in this case."

Proposed findings of fact and conclusions of law and judgment were prepared by petitioners and cover 35 printed pages in the record. They were accepted by the trial court as drafted and without

Petitioners' Exhibit No. 4-A—(Continued)
change. This work consumed approximately five days.

The United States on the 9th day of June, 1945, lodged with the Court a written motion to vacate the judgment, also the conclusions of law and to amend in numerous particulars the findings of fact and conclusions of law.

The motion was resisted by petitioners who made an oral argument against the motion. The Court submitted the motion on June 11, 1945, and denied the same by order made on July 10, 1945.

Thereafter, and on the 8th day of August, 1945, the United States filed its Notice of Appeal from the whole of the Judgment. A transcript consisting of 608 printed pages was prepared by Counsel for the United States, with the aid of petitioners. Elaborate briefs were prepared and filed by both appellant and appellee. Appellee's Reply Brief consisted of 39 printed pages.

The cause came on for hearing in the Circuit Court of Appeals at San Francisco on the 27th day of August, 1946, when two counsel for Appellee appeared and argued the cause.

On December 12, 1946, the Circuit Court of Appeals affirmed the judgment in part and reversed it in part. The net result was that plaintiff's right to the allotments selected by him and his wife, Guadalupe Arenas, were validated and the claims for the allotments in the name of Francisco Arenas and Simon Arenas were declared invalid.

Appellee, being dissatisfied with the decision re-

Petitioners' Exhibit No. 4-A—(Continued)

specting the allotments claimed in the name of Francisco Arenas and Simon Arenas, prepared and on January 12, 1947 filed a Petition for Rehearing. The same was denied January 14, 1947.

Petitioners thereupon prepared a record as the basis for an application for Certiorari to the Supreme Court of the United States, which consisted of 676 printed pages. A Petition for Certiorari, consisting of 32 printed pages was prepared and filed within the time allowed by law. But the Supreme Court denied the same by order dated June 9, 1947. During the period from January 9, 1945, until the conclusion of the case, Oliver O. Clark estimates his time at 27½ days. David D. Sallee estimates his time at 10 days. John W. Preston estimates his time at 40 days. This period covers the second trial of the action, the defending of the judgment in the Circuit Court of Appeals and the preparation of the Petition for Certiorari to the Supreme Court of the United States. The Judgment in said cause contained the following provision:

“The Court hereby retains jurisdiction over this action and the subject matter thereof for the purpose of adjudicating the reasonable sums that shall be allowed and paid to the attorneys of record for plaintiff for their services rendered to him in the action and for expenses necessarily incurred by them in his behalf in the prosecution thereof, and for the purpose of making all necessary and proper orders, judgments and decrees for the securing and

Petitioners' Exhibit No. 4-A—(Continued)
 payment of all such sums so found due him and
 owing by the plaintiff to said attorneys.”

The litigation having terminated the petitioners
 filed with the Trial Court their Petition for a Sup-
 plemental Decree fixing attorneys' fees and for
 means of collecting same.

The value of the lands recovered for Lee Arenas
 is considerably in excess of One Million Dollars
 (\$1,000,000.00).

Admitted in evidence 2/10/48.

PETITIONERS' EXHIBIT No. 4-B

[Letterhead of John W. Preston]

January 22, 1948

STATEMENT OF ACCOUNT re LEE ARENAS v. USA

1943

October 25—Pd to Cropley, Clerk, deposit for printing brief.....	\$ 60.00	
October 28—Rec'd from Sallee.....		\$ 60.00
December 9—Collect telegram from Cropley	1.38	
December 28—Pd to Cropley, Clerk, copies of record	35.00	
December 28—Rec'd from Sallee.....		35.00

1944

January 12—Collect telegram from Cropley	1.38	
February 26—Pd. transportation to Wash., D. C.	138.49	
February 28—Rec'd from Sallee.....		138.49
March 7—Cash re expense to Washington....	130.00	
March 13—Cash re expense to Washington....	100.00	
March 10—Collect wires from Cropley.....	3.55	
April 28—Rec'd refund re transportation.....		80.50
July 11—Refund from Cropley.....		14.54
December 1—Pd for copy of decisions.....	.40	
December 1—Expense for trip to Riverside and Palm Springs.....	25.00	
December 13—Photostats of schedule.....	2.75	

Petitioners' Exhibit No. 4-B—(Continued)

1945

January 23—To Rosslyn Hotel for Wadsworth	22.00	
January 15—Refund re photostats.....		2.10
February 14—Phone to Bakersfield—Wadsworth	1.06	
April 16—Phone to Vaeth, Palm Springs.....	1.00	
April 26—To F. M. Hole, copy of opinion....	16.65	
May 7—Rec'd from Sallee.....		16.65
May 15—Two phone calls to Palm Springs....	2.00	
May 17—Certified copies of judgment.....	6.15	
December 4—Appearance fee re appeal.....	10.00	

1946

June 15—Printing brief on appeal.....	86.20	
June 17—Paid by the Tribe.....		86.20
September 22—Expense re trip to S. F. hearing	50.00	
September 23—Rec'd from Sallee.....		150.00
September 23—Rec'd from Mrs. Arenas.....		50.00
September 16—Phone calls re S. F. hearing	2.25	

1947

January 8—Pd. O'Brien for copy of opinion	5.00	
February 4—Wire to Mrs. Arenas.....	2.48	
February 4—Filing Petition for rehearing....	4.20	
March 17—Phone to O'Brien.....	2.25	
March 7—Rec'd from Sallee.....		100.00
March 10—Rec'd from Sallee.....		25.00
March 7—To Cropley, fee re Petition for Writ of Certiorari.....	25.00	
March 7—To O'Brien for preparation of record	100.00	
March 25—To Cropley, balance of deposit re writ	45.00	
April 14—Telegrams to Washington, D. C.....	3.99	
May 8—Printing Petition for Writ.....	92.52	
May 14—To O'Brien, balance for preparation	69.41	
July 14—Refund from Cropley.....		31.40
July 22—Wire from Cropley.....	1.94	
August 22—Certified copy of Judgment.....	1.50	
October 30—To constable re service on Arenas	1.00	

Petitioners' Exhibit No. 4-B—(Continued)

1947

November 21—To constable re service on

Arenas 2.00

December 16—Phone calls to Palm Springs 5.25

BALANCE DUE 266.92

\$1,056.80 \$ 789.88\$1,056.80 \$1,056.80

Admitted in evidence 2/10/48.

PETITIONERS' EXHIBIT No. 5

In the District Court of the United States, Southern District of California, Central Division

No. 1321—O'C—Civil

LEE ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

STIPULATION

It Is Hereby Stipulated by and between petitioners, John W. Preston, Oliver O. Clark and David D. Sallee, and respondents, United States of America and Lee Arenas (by United States of America), that the statements of petitioners respecting the facts relating to the manner in which they were

retained and employed as attorneys for Lee Arenas, the nature and contents of their contracts, the services performed thereunder, the amounts of their expenditures and the purposes for which such expenditures were made, the amounts advanced to them by or for Lee Arenas and the manner in which such advances were obtained, such actions, oral or written, as were taken pursuant to their contracts, both with Lee Arenas and representatives of the United States of America and any related facts material to the question of what constitutes a reasonable attorney fee for their services, may be taken in the office of John W. Preston, 712 Rowan Building, 458 South Spring Street, Los Angeles, California, at 2:00 p.m., Wednesday, January 28, 1948, upon questions put by counsel for respondents, that such statements may be reduced to writing and corrected, if corrections are required, either in the form of a written statement or written stipulation and subscribed to by said petitioners and may then be used by either parties in the same manner as if the statement was in the form of a written deposition.

It Is Further Stipulated that if upon completion of such statement or stipulation, either petitioners or the Attorney General of the United States shall require the taking of a formal deposition, the taking, formulating and subscription of such statement

or written stipulation shall not preclude such further proceedings.

Dated: January 28, 1948.

/s/ JOHN W. PRESTON,

/s/ OLIVER O. CLARK,

/s/ DAVID D. SALLEE,

Petitioners.

JAMES M. CARTER,

United States Attorney,

IRL D. BRETT,

Special Assistant to the

Attorney General,

/s/ By IRL D. BRETT,

For United States of America and Lee Arenas,
Respondents.

Admitted in evidence 2/10/48.

[Endorsed]: Filed Feb. 10, 1948.

PETITIONERS' EXHIBIT No. 6

AGREEMENT

This Agreement made and entered into this 20th day of November, 1940, by and between Lee Arenas, a duly enrolled member of the Tribe of Indians known as the Agua Caliente (Palm Springs) Band of Mission Indians of California, Party of the First Part, and David D. Sallee, attorney at law, residing at Los Angeles, California, Party of the Second Part,

Witnesseth:

That the Party of the First Part hereby contracts

Petitioners' Exhibit No. 6—(Continued)

with, retains and employs the Party of the Second Part as attorney in the matters hereinafter mentioned, subject to the approval of the Commissioner of Indian Affairs, and the Secretary of the Interior, pursuant to Section 2103 of the Revised Statutes of the United States of America.

It shall be the duty of said attorney to advise and represent the said Lee Arenas in connection with properly investigating and formulating any claim, or claims, either in law or in equity, that he may have by virtue of being a member of said Tribe as aforesaid, and by reason of the fact that he by inheritance has certain claims to certain properties hereinafter set forth, by virtue of the so-called Allotment Act of the Agua Caliente Band of Mission Indians residing in or about the vicinity of Palm Springs, in the County of Riverside, in the State of California, and in the United States of America, which said Act is known and designated as the Act of Congress of February 8, 1887 (24 Stat. L. 388) as amended by the Act of June 25, 1910 (36 Stat. L. 855), and Supplemented by the Act of March 2nd, 1917 (39 Stat. L. 969-76) which said Act provided among other things for the selection of allotments to Indians of the United States of America, and especially pertaining to the allotment selections of the said Agua Caliente (Palm Springs) Indian Reservation Tribe of Indians in California; and that said allotments or selections are hereinafter set forth, as follows, to-wit:

Lot No. 46, Section 14, Twp. 4 S., Range 4

Petitioners' Exhibit No. 6—(Continued)

East, S.B.B. & M., Riverside County, State of California, containing two (2) acres;

Tract No. 39, Section 26, Twp. 4 South, Range 4 East, S.B.B. & M., Riverside County, State of California, containing five (5) acres;

The East $\frac{1}{2}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$ and SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 26, Twp. 4 South, Range 4 East, S.B.B. & M., Riverside County, State of California, containing forty (40) acres;

Lot 28, Sec. 14, Twp. 4 S., Range 4 E., S.B.B. & M., Riverside County, State of California, containing two (2) acres;

Tract No. 42, Sec. 26, Twp. 4 South, Range 4 E., S.B.B. & M., Riverside County, State of California, containing five (5) acres;

SW $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 26, Twp. 4 South, Range 4 East, S.B.B. & M., Riverside County, State of California, containing forty (40) acres;

Lot 47, Sec. 14, Twp. 4 South, Range 4 E., S.B.B. & M., Riverside County, State of California, containing two (2) acres;

Tract No. 40, Sec. 26, Twp. 4 S., Range 4 E., S.B.B. & M., Riverside County, State of California, containing five (5) acres;

SE $\frac{1}{4}$ of NW $\frac{1}{4}$, Sec. 26, Twp. 4 South, Range 4 East, S. B. B. & M., Riverside County, State of California, containing forty (40) acres;

Lot 43, Sec. 14, Twp. 4 South, Range 4 East,

Petitioners' Exhibit No. 6—(Continued)

S. B. B. & M., Riverside County, State of California, containing two (2) acres;

Tract 37, Sec. 2, Twp. 5 South, Range 4 E., S. B. B. & M., Riverside County, State of California, containing five (5) acres;

SE $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 26, Twp. 4 S., Range 4 E., S. B. B. & M., Riverside County, State of California, containing forty (40) acres,

which said allotments were certified on or about the 21st day of June, 1923, by H. L. Wadsworth, Special Allotting Agent.

It shall be the duty of said attorney to advise the said Party of the First Part, and to represent him before all courts, departments, tribunals, and other officers and commissions having any duty to perform in connection with the investigation, consideration, or final settlement of his said claims, and any and all matters that may be necessary in the opinion of the said attorney at law, Party of the Second Part, and in the final settlement of any and all claims and matters pertaining to said allotment to said Party of the First Part, or to any of the ancestors of the said Party of the First Part, and any relative either by law or by marriage that might become the property of the said Party of the First Part by inheritance, or otherwise.

That said Party of the Second Part, attorney at law as aforesaid, in the performance of his duties as required of him under this contract, shall be subject to the reasonable supervision and direction of the Commissioner of Indian Affairs, and the Secre-

Petitioners' Exhibit No. 6—(Continued)

tary of the Interior, and the said attorney at law shall not make any compromise, settlement or other adjustment of the matters in controversy unless with the approval of either or both of said officers; and it is also understood and agreed that the said attorney at law, and his associates if any, shall pursue the litigation in question to and through the Court of final resort, unless authorized by the Secretary of the Interior to terminate the proceedings at an intermediate stage thereof;

It Is Agreed that the said attorney is hereby authorized to associate with him in said work hereunder such assistants, including attorneys, as he may select, provided that the Government of the United States shall not be liable for any expenses; however, it is understood and agreed by the said Party of the First Part that he is to advance from time to time to said attorney such reasonable and necessary expenses which said Party of the Second Part, or his associates, may deem necessary for the proper conduct of any litigation or appearances before any Commission or body of the United States to further said litigation or compromise thereof for the benefit of the said Party of the First Part, which said expenses which may be advanced are to be borne by the said Party of the First Part; however, the Party of the Second Part is to furnish proper vouchers for each and every item of expense that may be incurred.

It Is Further Understood that in consideration of the services to be rendered under the terms of this

Petitioners' Exhibit No. 6—(Continued)

contract, the Party of the Second Part shall receive an aggregate fee of ten per centum (10%) of the amount of the reasonable value of the property hereinabove set forth, or such part thereof as the Party of the First Part may become entitled to by reason of said litigation or proceedings. Said ten per centum compensation shall be upon the basis of the reasonable market value of the said property as of the date of the completion of said litigation, but in no event shall be less than the value as of the date of the signing of this agreement.

It Is Further Understood that in event the Party of the Second Part, or his associates who are actually associated in the litigation and investigation as aforesaid, shall advance any necessary expenses, they shall be reimbursed by the Party of the First Part, from the property recovered, such actual expenses as are strictly necessary or proper in connection with the printing of briefs, court costs for proceedings and other similar matters, and to include such actual and necessary traveling expenses, clerical hire, stenographic expense, and the like as may be properly required for the prosecution of said case, or cases; provided that all such expenditures shall be itemized and verified by the Party of the Second Part, and shall be accompanied by proper vouchers, and shall be paid only upon the approval of the Secretary of the Interior, or an officer designated by him who shall certify the same.

It Is Further Understood and Agreed by and between the parties to this Agreement, that in event

Petitioners' Exhibit No. 6—(Continued)

of a misunderstanding as regards the manner in which the compensation to the Party of the Second Part from the Party of the First Part shall be paid; and Trust Patents or receipts have been issued, and in that event the Party of the First Part shall thereupon make application for a removal of restrictions upon sufficient of the premises to be sold, and from the proceeds of said sale or sales to pay said Party of the Second Part; that in event it is not for the best interests of the parties hereto to sell said land, the removal of restrictions shall be applied for upon properties coming to the First Party, as selected by said Second Party, upon the basis of one-tenth of the property—that is to say, Second Party shall select one property that does not exceed ten per cent. of the total value of all properties, and that First Party shall select nine properties that do not exceed ninety per cent. of the total value of said properties, and continue to make such selections until all property shall have been selected. That the property selected by the Second Party shall then be deeded to said Second Party, subject to the approval of the Secretary of the Interior and the Commissioner of Indian Affairs.

It Is Further Agreed that this contract shall continue for a period of five (5) years beginning with the date of the signing thereof, or until the completion of said litigation.

And it is further understood and agreed that no assignment of this contract, or any interest therein, shall be made without the consent previously ob-

Petitioners' Exhibit No. 6—(Continued)

tained from the Commissioner of Indian Affairs, and the Secretary of the Interior, and that such assignment if made must comply with Section 2106 of the Revised Statutes of the United States.

This contract shall run to and be binding upon the heirs, executors, administrators, and assigns of the parties hereto.

In Witness Whereof we have hereunto set our hands and seals this 20th day of November, 1940, in the City of Los Angeles, State of California.

/s/ LEE ARENAS

Party of the First Part

/s/ DAVID D. SALLEE

Atty., Party of the Second Part.

Department of the Interior

Office of Indian Affairs

....., 19 .

The foregoing contract is hereby approved in accordance with the provisions of section 2103 of the United States Revised Statutes.

.....
Commissioner

Department of the Interior

Office of the Secretary

....., 19 .

The foregoing contract is hereby approved in accordance with the provisions of Section 2103 of the United States Revised Statutes.

.....
Secretary

Petitioners' Exhibit No. 6—(Continued)

I, Paul J. McCormick, a Judge of the District Court for the Southern District of California, a Court of Record, do hereby certify, pursuant to Section 2103 of the Revised Statutes of the United States, that David D. Sallee, Attorney at Law, of Los Angeles, California, Party of the second part to the above written and hereto attached contract, in his own proper person and in my presence at Los Angeles, on the 20th day of November, 1940, entered into, signed and executed in quadruplicate the said contract above written and hereto attached, and that he executed the same in his own behalf and of his own free act and deed; and that as then stated to me that said Lee Arenas of the Agua Caliente Tribe of Indians is the party interested on the one side, and that the said attorney at law of Los Angeles is the party interested on the other.

In Witness Whereof, I have hereunto signed my name as Judge of the said Court.

[Seal] /s/ PAUL J. McCORMICK
(Judge)

District Court of the Southern District,
Of the State of California—ss.

I, R. A. Zimmerman, Clerk of the Court in said District, do hereby certify that Hon. Paul J. McCormick, whose genuine signature is subscribed to the annexed writing, was, at the time of signing the same, Judge of said Court, duly commissioned and qualified.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the said Court at the City

Petitioners' Exhibit No. 6—(Continued)

ing the same, Judge of said Court, duly commissioned and qualified.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the said Court at the City of Los Angeles on the 20 day of November, 1940.

(Seal of the District Court.)

/s/ R. A. ZIMMERMAN,
Clerk of the District Court for The Southern District of the State of California.

[Stamped]: Received Jan. 14, 1941. 2520. Office of Indian Affairs.

Admitted in evidence 2/10/48.

PETITIONERS' EXHIBIT No. 6-A

Department of the Interior
Office of Indian Affairs

Washington, February 6, 1948

I, James W. Hutchison, Acting Commissioner of Indian Affairs, do hereby certify that the paper hereunto attached is a true copy of the original as the same appears of record in this Office.

In Testimony Whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed on the day and year first above written.

[Seal] /s/ J. W. HUTCHISON,
Acting Commissioner.

Petitioners' Exhibit No. 6-A—(Continued)

Land Division

Claims—50045-42—4843-41—J T R

[Stamped]: Jun 3 1943

Chicago, Illinois

David D. Sallee, Esq.,

Attorney at Law,

806 Garfield Bldg., Los Angeles, Calif.

My dear Mr. Sallee:

The attorneys' contract between you and Lee Arenas of the Palm Springs Indian Reservation, California, has not heretofore received administrative sanction for reasons which may be briefly outlined thus:

(1) Sections 2103-2106 of the Revised Statutes (now Sections 81-84, Title 25 U.S.C.) pursuant to which the purported contract is drawn are inapplicable to contracts between individual Indians and attorneys employed by them in their individual capacity. Rather the sections mentioned deal primarily with tribal contracts affecting tribal matters and pursuant to which attorneys retained by an Indian tribe, under proper authorization from the tribal authorities, must have such contracts executed before a judge of a court of record. Contracts with individual Indians require no such formality. See the Act of June 30, 1913 (38 Stat. 97; Title 25 U.S.C. Section 85).

(2) The manifest purpose of the contract between you and Mr. Arenas is to compel recognition by the United States Government, including the Secretary of the Interior and the Commissioner of Indian Affairs, of the alleged right of Lee Arenas and

Petitioners' Exhibit No. 6-A—(Continued)

other members of his family to the allotment of certain lands within the Palm Springs Indian Reservation, described in detail on pages 2 and 3 of the contract at hand. As we view it, the legal right of the Indians at Palm Springs Indian Reservation to compel recognition of their claim to right of allotment in severalty has previously been adjudicated by the courts and decided against the contention of these Indians: See the case of Genevieve P. St. Marie, et al vs. United States (24 Fed. Sup. 237; affirmed 108 Fed. 2d 876; certiorari denied by the Supreme Court on October 14, 1940). The legal issues involved having thus been definitely determined and disposed of by the courts, it is not seen wherein any good purpose would now be served by encouraging other individual members of this band to indulge in fruitless and apparently hopeless litigation. This does not mean to imply of course that this office would decline to consider or approve a proper contract under appropriate circumstances, if correctly drawn and executed.

(3) As to the contract at hand, ordinarily we do not favorably consider such contracts between Indians and their attorneys, involving civil actions at least, unless the fee or compensation to be allowed the attorneys for services rendered is on what we term a combination "contingent fee and quantum meruit basis". That is, and briefly, no recovery, no fee and in the event of recovery the fee allowed is to be determined on a quantum meruit basis by the Commissioner of Indian Affairs or the Secretary of

Petitioners' Exhibit No. 6-A—(Continued)

the Interior. Pages 5, 6, and 7 of the contract between you and Mr. Arenas imply that your fee and necessary expenses are to be paid "from the property recovered", but as to the fee itself (page 5) that is fixed at 10 per cent of the amount of the reasonable value of certain property previously described in the contract. That description covers four town lots of two acres each in Section 14; four tracts of five acres each and four tracts of 40 acres each in Section 26, Township 4 South, Range 4 East.

While a fee of 10 per cent in itself is ordinarily not regarded as excessive yet we do know that much of the property at Palm Springs is quite valuable, particularly the town lots in Section 14 and hence we would not feel disposed to consider favorably a contract contemplating a flat fee even of 10 per cent where the property rights involved may run into high figures.

These are but additional comments or suggestions as to the form and substance of the contract at hand, but in view of the fundamental objection under number 2 above, possibly any further comment at this time would be superfluous.

In connection with the subject matter generally; i.e., contracts between individual Indians and attorneys employed by them, you appreciate that the Indians as citizens have the same right as other citizens to negotiate valid and binding contracts with third parties, including attorneys, without approval by this Office or the Department provided the ob-

Petitioners' Exhibit No. 6-A—(Continued)

ligations incurred or to be incurred under such contracts do not affect tribal or other property rights subject to control or supervision by this Department. In other words, unless payment for services rendered is to be had out of restricted funds or other assets belonging to the Indians, approval of such contracts by this Department is not required, as a matter of law.

Sincerely yours,

[Seal] /s/ WALTER V. WOEHIKE,
Assistant to the Commissioner.

MLM—5-MS-29

cc to Mission Agency

Admitted in evidence 2/10/48.

PETITIONERS' EXHIBIT No. 7

POWER OF ATTORNEY AND CONTRACT

Know All Men By These Presents: That I, Lee Arenas, an enrolled Indian and member of the Palm Springs, or Agua Caliente, Indian Reservation, Riverside County, and State of California, have constituted, appointed and made, and by these presents do make, constitute and appoint David D. Sallee, John W. Presten and Oliver O. Clark, Esq., of Los Angeles, California, my true and lawful Attorneys, for me and in my name, place and stead to do all things lawful, proper and right in my behalf as a member of said tribe and reservation, and particularly to look after and protect my rights, and the rights of the members of my family, in respect

to all rights, including our allotments which I have selected as the head of the family for myself and my children, and to protect us in the use and occupancy of the same and doing all things necessary in our behalf. That full power and authority is hereby granted to David D. Sallee, John W. Presten and Oliver O. Clark, to appear before any and all the Departments of the United States in my behalf, or any of the Courts to which it may be necessary to apply; and to also defend out interests in any Courts or tribunals. I hereby agreeing to pay my said Attorneys upon a quantum meruit basis for services rendered, and to advance or reimburse any and all expenses incurred in my behalf or in behalf of any and all members of my family. All to be subject to the rules and regulations of the Department of the Interior.

I, Hereby Giving and Granting To My Said Attorneys full power of substitution and assistance to perform every act and transaction necessary to be done in our behalf the same as I might or could do if personally present; I hereby ratifying and confirming all that my said Attorneys, assistants or substitutes may lawfully do, or cause to be done in our behalf. This contract is irrevocable except upon proper, fair and just termination of the same, particularly payment of costs, expenses and fees earned.

In Witness Whereof I have hereunto set my hand this 1st day of February, A.D. 1945.

/s/ LEE ARENAS

The State of California,
County of Riverside—ss.

Be it known that on this 1st day of February, 1945, before me, the undersigned Notary Public in and for said County and State, personally appeared the above named maker of this contract and power of attorney, and to me known to be the identical person, and who acknowledged the execution thereof to be his free act and deed for the purposes in said above contract and power of attorney set forth.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal the day and year in the above certificate set forth.

[Seal] /s/ BENTON BECKLEY,
Notary Public in and for the County of Riverside,
State of California.

My Commission expires June 9, 1947.

Admitted in evidence 2/10/48.

PETITIONERS' EXHIBIT No. 8

POWER OF ATTORNEY AND CONTRACT

Know All Men By These Presents: That I, Marian Therese Arenas, an enrolled Indian and member of the Palm Springs, or Agua Caliente, Indian Reservation, Riverside County, and State of California, have constituted, appointed and made, and by these presents do make, constitute and appoint David D. Sallee, John W. Presten and Oliver O. Clark, Esq., of Los Angeles, California, my true

and lawful Attorneys, for me and in my name, place and stead to do all things lawful, proper and right in my behalf as a member of said tribe and reservation, and particularly to look after and protect my rights, and the rights of the members of my family, in respect to all rights, including our allotments which I have selected as the head of the family for myself and my children, and to protect us in the use and occupancy of the same and doing all things necessary in our behalf. That full power and authority is hereby granted to David D. Sallee, John W. Preston and Oliver O. Clark, to appear before any and all the Departments of the United States in my behalf, or any of the Courts to which it may be necessary to apply; and to also defend our interests in any Courts or tribunals. I hereby agreeing to pay my said Attorneys upon a quantum meruit basis for services rendered, and to advance or reimburse any and all expenses incurred in my behalf or in behalf of any and all members of my family. All to be subject to the rules and regulations of the Department of the Interior.

I, Hereby Giving and Granting To My Said Attorneys full power of substitution and assistance to perform every act and transaction necessary to be done in our behalf the same as I might or could do if personally present; I hereby ratifying and confirming all that my said Attorneys, assistants or substitutes may lawfully do, or cause to be done in our behalf. This contract is irrevocable except upon proper, fair and just termination of the same, particularly payment of costs, expenses and fees earned.

In Witness Whereof I have hereunto set my hand
this 1st day of February, A.D. 1945.

/s/ MARIAN THERESE ARENAS

The State of California,
County of Riverside—ss.

Be it known that on this 1st day of February, 1945, before me, the undersigned Notary Public in and for said County and State, personally appeared the above named maker of this contract and power of attorney, and to me known to be the identical person, and who acknowledged the execution thereof to be his free act and deed for the purposes in said above contract and power of attorney set forth.

In Witness Whereof I have hereunto set my hand and affixed my notarial seal the day and year in the above certificate set forth.

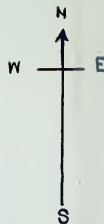
[Seal] /s/ BENTON BECKLEY,
Notary Public in and for the County of Riverside,
State of California.

My Commission expires June 9, 1947.

Admitted in evidence 2/10/48.

T. 4 S. R. 4 E. Sec. 14

1 INCH = 400 chs. or 264 ft



Sec. 15

Street

Townsite

St

Main

Springs

St

Palm

Al. 51.	Al. 51.
2 ✓	1 ✓
Al. 51	Al. 51
3 ✓	4 ✓
Al. 51	Al. 51
14 ✓	13 ✓
Al. 19 ✓	15
Al. 6 ✓	22
Al. 7 ✓	23
Al. 12 ✓	26

Al. 10.	Al. 10.
5 ✓	6 ✓
Al. 11 ✓	Al. 11 ✓
12	11
Al. 30 ✓	16
Al. 31 ✓	21
Al. 32 ✓	24
Al. 33 ✓	25

Al. 14 ✓	8
Al. 15 ✓	9
Al. 34 ✓	Al. 36 ✓
17	18
Al. 35 ✓	Al. 37 ✓
20	19

Al. 13 ✓	27
Al. 9 ✓	44
Al. 44 ✓	45
Al. 41 ✓	48
Al. 45 ✓	49
Al. 44 ✓	52

Al. 1	28
Al. 5 ✓	113
Al. 2 ✓	46
Al. 3 ✓	47
Al. 4 ✓	50
Al. 8 ✓	51

Al. 54 ✓	Al. 54 ✓	Al. 54 ✓	Al. 54 ✓	Al. 54 ✓	Al. 54 ✓	Al. 54 ✓
29	30	31	32	33	34	35
42	41	40	39	38	37	36

Al. 43 ✓	Al. 38	Al. 34	
55	56	57	58

Al. 16	53
Al. 17 ✓	60
Al. 18 ✓	61

Al. 40 ✓	54
Al. 21 ✓	59
Al. 22 ✓	62

Cemetery

Tr. #43

4 Acres

500

Sec. 14, T. 4 S., R. 4 E.

1 INCH = 400 chs. or 264 ft.

Case No. 13210'0

Date

Date

Clerk

15

Deputy

for and

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1

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1

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See Rem 23

1041

Case NO.	13210'E.	Ad.	18	EXPIRATION
	Grenan			
	Pulver			
Date			18	
Date	2/20/46			
Clerk, 14				
	Farjeano.			

PETITIONERS' EXHIBIT No. 20

In the District Court of the United States, Southern
District of California, Central Division

No. 1321—O'C—Civil

LEE ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Under the powers of attorney granted by the group of Indians at Palm Springs to John W. Preston, Oliver O. Clark and David D. Sallee, complaints were prepared in 1945, but not filed, for the following:

Lena Jessica Lugo Welmas, Florida Patencio, John J. Patencio, Albert Patencio, Matilda Patencio Welmas Saubel, Nicholosa Sol, Frank Segundo, Clemente Segundo, Willie Marcus Belardo.

On April 24, 1945, the following actions were filed:

No. 4401, Carrie Pierce Casero; No. 4402, Laverne Miguel Milanovich; No. 4403, Lucy Pete; No. 4404, Annie Pierce; No. 4405, Ramalda Taylor.

On February 9, 1945, the following actions were filed:

No. 4235, Viola Hatchitt; No. 4236, Juana Hatchitt.

PETITIONERS' EXHIBIT No. 20

In the District Court of the United States, Southern
District of California, Central Division

No. 1321—O'C—Civil

LEE ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Under the powers of attorney granted by the group of Indians at Palm Springs to John W. Preston, Oliver O. Clark and David D. Sallee, complaints were prepared in 1945, but not filed, for the following:

Lena Jessica Lugo Welmas, Florida Patencio, John J. Patencio, Albert Patencio, Matilda Patencio Welmas Saubel, Nicholosa Sol, Frank Segundo, Clemente Segundo, Willie Marcus Belardo.

On April 24, 1945, the following actions were filed:

No. 4401, Carrie Pierce Casero; No. 4402, Laverne Miguel Milanovich; No. 4403, Lucy Pete; No. 4404, Annie Pierce; No. 4405, Ramalda Taylor.

On February 9, 1945, the following actions were filed:

No. 4235, Viola Hatchitt; No. 4236, Juana Hatchitt.

On January 9, 1947, action No. 6221-PH in re Eleuteria Brown Arenas was filed, and is now pending.

On February 16, 1948, an action was filed in the District Court of the United States for the District of Columbia, against Julius A. Krug, Secretary of the Interior of the United States, on behalf of the following named Palm Springs Indians:

Ramalda Lugo, aka Ramalda Lugo Taylor, Carrie Pierce Casero, Annie Pierce, Juana Saturnino Hatchitt, Viola Juanita Hatchitt, Lena Jessica Lugo, aka Lorene L. Welmas, LaVerne Milanovich, aka LaVerne Virginia Miguel, Elizabeth Pete, Anthony (Andreas) Joseph, Joe Patentio, aka John J. Patentio, Florida Patentio, aka Flora Patentio, Santo Albert Patentio, Clemente Segundo, aka C. P. Segundo, Francis Segundo, aka Francisco Segundo, Matilda Patentio, aka Matilda T. Saubel.

Admitted in evidence 3/8/48.

[Endorsed]: Filed Mar. 8, 1948.

RESPONDENTS' EXHIBIT "D"

[Letterhead of David D. Sallee]

November 7, 1944

Mr. and Mrs. Lee Arenas,
Palm Springs, California

Dear Mr. and Mrs. Arenas:

Marion you were going to send me some money last Friday. You did not do it. However, I under-

stand you went to Pala and I am very sorry to hear that Vivian Bank's mother passed on. I am writing her today.

We were notified this morning by the United States Attorney's office that we would have to get our answers in on those various suits that were filed against you individual Indians. These will have to be in not later than the 27th and I am going to have to have some costs for each one. Also, you were going to send some costs to pay Wadsworth's expenses from San Diego up here and his hotel bill while here. I think it will be at least \$25.00 we will have to pay for expenses of Mr. Wadsworth. So you get me as you promised, at least \$50.00 in here by return mail.

Yours truly,

/s/ DAVID D. SALLEE

DDS:Y

Admitted in evidence 2/20/48.

RESPONDENTS' EXHIBIT "F"

In the District Court of the United States In and
For the Southern District of California
Central Division

No. 1321-O'C Civil

LEE ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

TESTIMONY OF DONALD C. JONES AS TO
HIS QUALIFICATIONS AS AN EXPERT
REAL ESTATE APPRAISER.

Pursuant to the Order of this Court made on Friday, February 13, 1948, the following testimony of Donald C. Jones as to his general and special qualifications as an expert real estate appraiser is hereinafter set forth in question and answer form and subscribed to by said witness:

Q. Where do you reside, Mr. Jones?

A. I reside in Fullerton, Orange County, California.

Q. What is your occupation?

A. Realtor and appraiser.

Q. Are you a licensed real estate broker?

A. Yes; I have a license as a real estate broker in the State of California since 1927.

Q. Have you been active in buying and selling properties on your own account and as a broker for clients?

Respondents' Exhibit "F"—(Continued)

A. Yes, I have.

Q. What types of properties?

A. I specialize particularly in agricultural properties. However, I have bought and sold on my own account income properties, residential subdivision properties, as well as citrus groves and agricultural property, and have also handled all kinds of real estate as a broker.

Q. How old are you, Mr. Jones?

A. 51.

Q. What has been your education?

A. I graduated from the University of California at Berkeley in 1921 with a BA degree, attended the University of Wisconsin for three years prior to World War I. I completed my education after World War I at the University of California.

Q. Subsequent to that and prior to your engagement as a real estate broker, what was your activity?

A. Prior to entering the real estate profession I had some experience as a ranch foreman on a citrus grove in Orange County, from 1921 to 1924. Then I operated properties of my own, citrus groves, ranch properties, and income properties in Orange County, Riverside County, San Diego County, and Los Angeles County.

Q. In connection with real estate activities, have you held any position in either local or other real estate boards or associations?

A. Yes. I have been a member of the Fullerton Realty Board since 1927; past President of the

Respondents' Exhibit "F"—(Continued)

Fullerton District Board of Realtors, two terms. I am a member of the California Real Estate Association, the National Association of Real Estate Boards, the Institute of Farm Brokers, America Right of Way Association, and of the American Institute of Real Estate Appraisers.

Q. In connection with your activity as a real estate broker and as an operator buying and selling real estate of various kinds throughout Southern California, have you had occasion to make appraisals?

A. Yes I have.

Q. What kinds of properties have you appraised?

A. I have appraised practically all types of real property, Mr. Brett, continuously since 1928 in various capacities.

Q. In that connection have you made appraisals for others, and particularly for the purpose of determining the fair market value of these properties?

A. Yes. I have been employed by private individuals, corporations, and public bodies, both state and federal, as an appraiser of the fair market value of real estate.

Q. Have you testified in court?

A. Yes. I have testified in the Superior Courts of Los Angeles County, Orange County, Ventura County, San Diego County, and Riverside County, and have testified on the market value and damages to real properties in the federal courts of the Southern District of California.

Respondents' Exhibit "F"—(Continued)

Q. Have you had previous employment by the United States Government in the capacity of real estate appraiser?

A. Yes.

Q. For what agencies of the federal government?

A. For the United States Army Engineers, United States Navy, and Lands Division of the Department of Justice.

Q. Will you briefly indicate the scope of those particular appraisals, what properties they covered, and their locations?

A. I was employed as an appraiser for the U. S. Engineers in 1939 in the appraisal of some eight thousand acres of land involving Prado Dam, on the Santa Ana River.

Q. Where is that located?

A. The properties affected by this taking were located in Riverside and San Bernardino Counties. And I appraised properties for the United States Navy, scattered generally throughout Southern California, which were being acquired by the Government for War Purposes, such as airports, airport expansions, and bombing ranges—the various types of property being taken during the War. The same is true of the Lands Division, Department of Justice, taking property by condemnation proceedings or otherwise, for War purposes, scattered throughout Southern California. I was also employed by the Lands Division, Department of Justice, in the appraisal of some eight or ten thousand acres of

Respondents' Exhibit "F"—(Continued)

land in the Central Valley Project in the San Joaquin Valley, which was the subject of litigation under the Tucker Act in which I was a witness on the value and depreciation of value of certain lands affected by the Central Valley Project.

Q. In what counties?

A. The properties which were the subject of this litigation were in Merced and Madera Counties.

Q. Now, in your varied activities as a real estate appraiser since 1928, have you been employed by the State of California or any of its agencies?

A. Yes.

Q. State what agencies you have been employed by and the general character of the properties and their location.

A. I have been employed by the State Division of Highways for the appraisal of rights of way for highway and freeway acquisitions located in Riverside, Orange, and Los Angeles Counties. I am presently employed by the Division of Beaches and Parks in the appraisal of properties at Newport Beach which are the subject of a program to install a State Beach Park in connection with the City of Newport Beach. I am employed at the present time by the Department of Finance of the State of California to appraise properties located in San Bernardino County being acquired for the expansion of Patton Hospital.

Q. Have you been employed by any of the Counties of the State in the southern area?

A. Yes, by the Board of Supervisors of Orange

Respondents' Exhibit "F"—(Continued)

County, Orange County Flood Control District, by the Riverside County Counsel, by the Los Angeles County Counsel.

Q. Have you been employed by any of the cities in this southern area?

A. Yes, by the City of Los Angeles, through the City Attorney, in the appraisal of property at Playa del Rey for the establishment of a beach park, and by the City of Santa Ana in the appraisal of widening the streets in that city.

Q. Have you been employed by any school districts?

A. Yes, by the Buena Park School District of Orange County in the appraisal of some acreage being acquired for the expansion of the Buena Park School, and by the La Habra School District in a similar capacity in the appraisal being acquired for the expansion of the school.

Q. Have you been employed by any water districts or irrigation districts?

A. Yes, I was employed by the Santa Ana Valley Irrigation Company, a mutual water company, to appraise all of the properties in their ownership in Orange, Riverside, and San Bernardino Counties, all of the real properties which are held generally with the Anaheim Union Water Company.

Q. Have you been employed by the Metropolitan Water District?

A. Yes, I was appraiser for the Metropolitan Water District of Southern California from 1932 until the completion of the Colorado River Aque-

Respondents' Exhibit "F"—(Continued)

duct and its appurtenant works. I was employed in 1932 and was designated appraiser in 1935, and my employment by the Metropolitan Water District was on a per diem contract basis so that I had time for other employment during the period from 1932 to 1942.

Q. Are there any other public bodies for whom you have done appraisal work?

A. I was appraiser for the Federal Reserve Bank of Los Angeles during the time of the Japanese eviction, temporary employment. And I was appraiser for the Federal Intermediate Credit Bank in 1934 or 1935, for the appraisal of some 2500 acres of citrus property in Orange County for the purpose of granting a loan; appraiser for the Federal Land Bank at Berkeley in 1933 and 34, in the appraisal of agricultural properties in Riverside, San Bernardino, and Orange Counties. I was employed by numerous semi-public organizations, but do not recall any other definite public agencies.

Q. Have you appraised for the Federal Works Agency?

A. Yes, the properties being taken in the City of Los Angeles for War purposes in 1944 I believe—hotel and apartment house properties.

Q. Has your employment been exclusively for public bodies or agencies, for either the Government or the State?

A. No. I would say that during the war years, perhaps 85 or 90 per cent of my appraisal experience has been for government agencies; otherwise,

Respondents' Exhibit "F"—(Continued)

50% or more has been for private individuals or private corporations.

Q. Have you been employed by the Title Insurance and Trust Company of Los Angeles?

A. Yes.

Q. In what capacity?

A. To appraise five thousand acres of vineyard property located near Ontario for the Estate of Louisa Guasti.

Q. Have you appraised for any large ranch companies?

A. Yes I have, several of them.

Q. What ones?

A. The Irvine Ranch Company of Orange County; the Moulton Ranch Company, owners of a 22,000-acre cattle ranch in Orange County; for the Bastanchury Ranch Company of Orange County, owners of some 3,000 acres of citrus properties in Orange County; for the Azusa Foothill Citrus Company, owners of 600 acres of citrus properties near the City of Azusa.

Q. Have you appraised for any railroads?

A. Yes, for the Union Pacific Railroad Company—was a witness on the market value of real property along the line of the Union Pacific Railroad through Whittier, La Habra and Fullerton.

Q. We have several times discussed the fact that you have been appraising lands and determining and fixing your opinion as to its fair market value. Has that work included fixing the value of fee simple and of lesser interests in real property?

Respondents' Exhibit "F"—(Continued)

A. Yes.

Q. You have already testified that you have appraised rights of way?

A. Yes, a great deal of them.

Q. What rights? Water rights?

A. Yes.

Q. Depreciation arising out of takings which we call severance damage?

A. Yes.

Q. Have you also made appraisals of fair market value for purposes other than condemnation?

A. Yes, many times.

Q. Have you made such appraisals, for example, to assist in fixing the value of units of land as a basis for partition?

A. Yes, particularly in the Moulton Ranch appraisal. The purpose of the appraisal was for the division of undivided interests in the property.

Q. Have you made such appraisal for the purpose of determining the amount of damage ensuing from flood waters or from alleged misuse of lands?

A. Yes, I have been a witness on the alleged damage to properties occasioned by floods on several occasions.

Q. And in that respect gave your opinion of fair market value before and after the alleged damage?

A. Yes.

Q. In addition to your practical experience which you have just outlined, have you engaged in any specific educational activities to aid you and

Respondents' Exhibit "F"—(Continued)

to add to your practical knowledge of the science of appraising?

A. Yes, I have.

Q. What have you done in that respect?

A. I have taken a course from the University of Southern California in the appraisal of real estate in 1929, or 1930 I believe it was, and I have continuously, since entering the appraisal profession, studied the works and pamphlets and courses offered by various organizations, particularly that offered by the American Institute of Real Estate Appraisers.

Q. Is that organization a privately-owned business under a fictitious name, or is it an organization having an active membership throughout the country?

A. It has an active membership throughout the country, and is a division of the National Association of Real Estates Boards. I mean by that it is organized under their jurisdiction. However, it is a separate entity to itself, and members are composed of qualified appraisers throughout the United States.

Q. Can anyone join, or is such party required to exhibit certain qualifications before he is admitted?

A. To become a member of the American Real Estate Appraisers one must have at least eight years experience as an appraiser; must submit copies of his appraisal work to the Commission's committee; must take a written examination prepared by the examining committee in our Chicago

Respondents' Exhibit "F"—(Continued)
office; and must pass an oral examination by an Admission Committee of the local chapter with which he desires to affiliate.

Q. Does such organization have any official publications?

A. Yes, it has a national magazine known as the Appraisal Journal, which is a quarterly magazine, published four times yearly. It has numerous bulletins and appraisal case study courses which it offers to its members and to the public at large.

Q. With specific reference to the City of Palm Springs and its environs, when did you, as an appraiser, become familiar with the value of real estate in that area?

A. In 1928 or 1929.

Q. And in what capacity were you engaged in becoming familiar with that area?

A. I was engaged as a real estate broker, in negotiating an exchange of citrus properties in Orange County for residential income property and vacant land in Palm Springs.

Q. Did that employment include any personal inspection of the premises and investigation of surrounding properties and of conditions existing at that time in real estate values?

A. Yes. I had a client who wanted to exchange some Orange County citrus property for business income property in Palm Springs, and I was trying to find a property that would suit him as well as trying to find a Palm Springs property owner who

Respondents' Exhibit "F"—(Continued)

would be interested in Orange County citrus property.

Q. Will you briefly indicate what the scope of your investigation was at that time?

A. I investigated the sales and listings of business income properties and vacant lots in Palm Springs adapted to business income developments, and became familiar with the community as a whole.

Q. Following that, did you have any further activity in the Palm Springs area in the course of your chosen work as a real estate broker and as an appraiser prior to the time that you were employed by the United States in this particular case?

A. Yes.

Q. What was your next employment which included appraisal work and which had direct application to the Palm Springs area?

A. In 1938 I was employed by Pearl McManus and her attorney E. Heber Winder, of Riverside, to appraise approximately 500 acres of land in Section 19 and Section 29 lying just easterly of the City of Palm Springs which were the subject of litigation with the Smoke Tree Ranch over flood damages. I was a witness on the market value of the property affected and the damages thereto.

Q. In respect to that employment, will you briefly indicate what the scope of your investigation and activities were?

A. In connection with my forming an opinion of the market value of this property before and after the flood damage, I made an intensive survey of the

Respondents' Exhibit "F"—(Continued)

real estate market at Palm Springs and vicinity, and I personally inspected practically all of the vacant acreage as well as the lands being offered for subdivision in the vicinity, getting the information regarding the selling price of the lands and the asking price of lands then offered for sale, particularly on the Smoke Tree Ranch in Section 23 and the lands lying just easterly of the main developed community of Palm Springs.

Q. Did that include lands which are similar in character to those involved in this particular case?

A. Yes, the properties in that litigation would be comparable in many respects to the lands in Section 26 involved in this case.

Q. Now, following that employment, did you make any other investigations and appraisals in the Palm Springs area prior to your employment in this particular case?

A. Yes, in 1943 I was employed by the U. S. Army Engineers to appraise lands in Section 13 being taken by the Government for the Palm Springs Army Airport. Some three or four hundred acres of desert lands, some improved and some unimproved, were appraised by me at that time, and in 1944 I was employed by the Lands Division of the Department of Justice for the appraisal of properties being taken for the expansion of this airport, leasehold interests being taken for use as a part of the airport, and all lands in Section 11, improved properties, being taken for the expansion of Torney General Hospital, formerly Hotel El Mira-

Respondents' Exhibit "F"—(Continued)

dor. I was also employed by the Lands Division of the Department of Justice in 1944 or 1945 for the appraisal of a Sewage Disposal Plant site located in Section 19, and for rights of way for roads and pipe lines as a part of the Torney General Hospital and the Palm Springs Army Airport.

Q. Mr. Jones, in each of these appraisal assignments did you make a detailed study of the then existing real estate market in Palm Springs and vicinity?

A. Yes, the appraisal assignments required a detailed study of the real estate market in Palm Springs and vicinity.

Q. Did you, as a part of those assignments, make an investigation of sales and listings on all types of developed and undeveloped acreage of residential and business properties?

A. Yes.

Q. Did you obtain information as to proposed subdivisions and then subsequently obtain information after the subdivisions had been installed and properties had been sold as subdivided properties so that you were in a position to ascertain and know the trends in each of those sections which comprise the general Palm Springs area?

A. Yes. In many instances the same properties of which I had obtained specific information in 1938 were the subject of resale or development in 1943 and the years intervening, I had the specific information regarding those sales on the same property before and after they were subdivided.

Respondents' Exhibit "F"—(Continued)

Q. In this activity that you have described since 1928 and up to the time of your employment in this case, have you had any opportunity to examine subdivision activity and to ascertain the experience of various subdividers in Southern California?

A. I have appraised properties being acquired for that purpose and properties which were already subdivided, and I have been a subdivider myself.

Q. With reference to the Palm Springs area, have you had the same opportunity of examining unsubdivided acreage which was being considered for subdivision, of discussing the plans, designs and intentions of the subdividers before the subdivision—and then of observing what was done after the subdivisions were installed and placed on the market?

A. I have, yes, particularly regarding the properties of Pearl McManus, a large number of which were subdivided during the years 1938 and following.

Q. Can you give us the names of any of the subdivisions which you have been able to follow and have some knowledge of from the time when it was vacant acreage up to the time when it was actually subdivided and being disposed of?

A. I am familiar with the Smoke Tree Ranch subdivision and development in Section 25. I have specific knowledge of Sun View Estates tract; the

Respondents' Exhibit "F"—(Continued)

Deep Well Ranch tract; the La Paz Ranch tract in Section 23; and the present development of the Tahquitz River Estates tract comprising some 150 acres in Section 23. I am familiar with the development of numerous other tracts from the time they were vacant acreage until they were completed and being sold for residential sites and desert estate tracts. Among these are the Luring Sands tract and the Desert Palms Estates, being two subdivisions comprising 60 acres and 40 acres, respectively, in the northwest quarter of Section 13, and most of the subdivisions formerly owned by Pearl McManus in Sections 13, 15, 19, and 23. With respect to some of these subdivisions I have specific knowledge of the purchase price of the rough desert land, the approximate cost of the subdividing and the retail selling price of the improved property.

Q. I have noted that on the petitioners' Exhibit 14-A there is shown an Item No., which is listed as the Ski Club. Are you familiar with that particular property?

A. Yes. I appraised that property for the Lands Division of the Department of Justice. It was originally in the area taken for the Palm Springs Army Airport.

Q. When did you appraise that?

A. In 1943 and again in 1944. The property was not known as the Ski Club, it was the Skeet Club, a sportsmen's club, a club for shooting clay pigeons.

Respondents' Exhibit "G"—(Continued)

held under trust patent by Lee Arenas are assumed to be correct as furnished by your office, and by the Assistant Superintendent of the Mission Indian Agency at Palm Springs, which report a total of 94 acres of land in the Arenas allotments.

In accordance with your instructions, the appraisal herein given of the fair market value of the subject properties is based upon the assumption that good and marketable title to the lands can be delivered by the present owner. In other words, the fair market value herein reported represents my opinion of the present market value of fee simple title to the subject lands.

I understand that these lands are held under a trust patent, and the restrictions upon such a title or right of interest, are covered in Title 25, Section 348, U.S. Codes, which declare:

"That the United States does and will hold the land thus allotted, for the period of 25 years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made * * * and that at the expiration of such period, the United States will convey the same, by patent, to said Indian, or his heirs, in fee, discharged of said trust and free of all charges or encumbrances whatsoever; Provided, that the President of the United States may in any case, in his discretion, extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such convey-

Respondents' Exhibit "G"—(Continued)
ance or contract shall be absolutely null and void."

Under these restrictions, it is my opinion that the trust patent right held by Lee Arenas in these properties has no marketability, and any assignment of his interest in these lands would be null and void, unless such assignment had the specific approval of the Secretary of the Interior, or other competent Federal authority.

I am therefore unable to give you an opinion as to the present fair market value of the trust patent rights held by Lee Arenas in these lands. It is true that Lee Arenas is now obtaining an annual revenue, estimated to be from \$20,000 to \$32,000 per year, from tenants who are supposed to be leasing his allotted lands. Legally, these so-called leases are not in conformity with the rules and regulations set forth by the Secretary of the Interior, and the proceeds of these leases apparently should be paid to the Commissioner of Indian Affairs, to be held for the benefit of Lee Arenas. Under such conditions, it is impossible for me to estimate the fair market value of the trust patent rights held by Arenas.

No appraisal has been made of the buildings or improvements now located on a portion of these lands, it being assumed that these structures are owned by tenants who are renting the sites for these improvements from Lee Arenas.

Based upon my inspection of the subject lands, a comparison of these lands with other similar lands located in the immediate vicinity recently sold, or now offered for sale on the open market, and by

Respondents' Exhibit "G"—(Continued)

reason of my experience as a realtor and appraiser, I have formed the opinion that the fair market value of fee title to these lands, as of February 9, 1948, is the sum of Two Hundred and Forty-Five Thousand Dollars (\$245,000.00).

Your attention is called to the factual data, photographs, maps and reports of interviews had in connection with the appraisal investigation which are herewith submitted jointly by Appraisers Bernard G. Evans and Donald C. Jones, under separate cover, and which are a summary of the basic information upon which this appraisal is predicated.

No responsibility is assumed in this appraisal for matters which are legal in nature. I have no personal or financial interest in any of the property herein appraised, nor is my opinion of value in any way influenced by my employment in this matter.

I am prepared to testify in Federal Court as a witness in this matter in support of the opinions and values herein expressed.

Respectfully submitted,

/s/ DONALD C. JONES, M.A.I.

Appraiser.

DCJ:gb

Summary of Appraisal

	Market Value of Fee Title:
Subdivided and Leased Lands with Palm Springs City Water in Section 14, T4S, R4E:	
Lot 46—2 Acres at \$6,400 per Acre.....	\$12,800
Lot 47—2 Acres at \$6,400 per Acre.....	12,800
Sub-Total—4 Acres Land in Sec. 14.....	<hr/> \$25,600

Respondents' Exhibit "G"—(Continued)

	Market Value of Fee Title:
Subdivided and Developed Lands with Palm Springs City Water in Section 26, T4S, R4E:	
Lot 39—5 Acres at Av. \$8,000 per Ac.....	\$40,000
Lot 40—5 Acres at Av. \$8,000 per Ac.....	40,000
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Sub-Total—10 Acres Fronting Palm Canyon Dr.	\$80,000
Undeveloped Desert Lands with Water Rights, in Section 26, T4S, R4E:	
SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$ —10 Acres	
SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$ —10 Acres	
E $\frac{1}{2}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$ —20 Acres	
SE $\frac{1}{4}$ of NW $\frac{1}{4}$ —40 Acres	
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Sub-Total	80 Acres
Desert Land at \$1750 Acre.....	140,000
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Grand Total—94 Acres	\$245,600
Fair Market Value of Fee Title to Arenas Lands as of February 9, 1948.....	\$245,000

Appraisal Report

Owner: Lee Arenas, a member of the Agua Caliente Band of Mission Indians, Palm Springs Indian Reservation, Riverside County, California.

Trust Patent: A Judgment of the United States District Court at Los Angeles, in Action No. 4405—O'C Civil, granted to Lee Arenas certain allotted lands of the Palm Springs Indian Reservation, to be held under terms of a Trust Patent until 1952, at which time the United States will convey these properties by patent to Lee Arenas, or his lawful heirs, free of all charges, or encumbrances; Provided, that the President of the United States may, in his discretion, extend the period of the Trust for an additional 25 years.

Respondents' Exhibit "G"—(Continued)

Arenas Lands: The properties allotted to Lee Arenas, and held in trust for him under terms of aforesaid Trust Patent, are described as follows:

Parcel 1—Lot 46, Sec. 14, T4S, R4E.... 2 Acres

Parcel 2—Lot 47, Sec. 14, T4S, R4E.... 2 Acres

Parcel 3—Lot 39, Sec. 26, T4S, R4E.... 5 Acres

Parcel 4—Lot 40, Sec. 26, T4S, R4E.... 5 Acres

Parcel 5—SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 26,

T4S, R4E10 Acres

Parcel 6—SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 26,

T4S, R4E20 Acres

Parcel 7—SE $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec. 26,

T4S, R4E40 Acres

Total Land.....94 Acres

Location and General Description: These properties are all located within the city limits of Palm Springs, California, a desert resort community, which is the trading center for an extensive recreational area. The city is situated at the base of San Jacinto Mountain, about three hours by rail or highway from the metropolitan center of Los Angeles.

Indian Lands in Palm Springs: The City of Palm Springs presents a land ownership condition which is unique. Every even numbered section of land within the city limits, (with the exception of the east half of Section 10, which was traded for an equivalent area in Banning about 1911) is Indian land, and was set aside for use of the Agua Caliente Band of Mission Indians by President

Respondents' Exhibit "G"—(Continued)

Grover Cleveland in 1896, pursuant to an Act of Congress. The alternate odd numbered sections of land were earlier railroad grants which have passed into private ownership.

While the lands in private ownership within the city have been largely developed and subdivided into business income, high-class residential, or desert estate tracts, the Indians and their official and unofficial advisors have been indifferent to the responsibilities imposed upon them by ownership of almost half of the area of this important resort community. Federal regulations governing the administration of the Palm Springs Indian Reservation are no different from those applied to all Indian lands, and are designed to meet only the problems of management and administration of remote, non-urban Indian land and the peculiar culture of a non-urban people.

Growth and Development of Palm Springs: In forming an opinion of the fair market value of the properties herein appraised, a study has been made of the growth and development of Palm Springs, together with an analysis of the trend of the real estate market in this community.

Prior to 1938, the city was unincorporated, and a wide fluctuation has been experienced in selling price of residential property and desert acreage adapted to residential development. A real estate "boom" during 1935 to 1938, flattened out in 1939-40. Establishment of the Torney General Hospital and Army Air Base at Palm Springs brought a marked influx of business and year-round residents

Respondents' Exhibit "G"—(Continued)

to the community. Real Estate sales were greatly increased, and market values of all properties rose rapidly during the years 1943 to 1947.

Since 1947, a noticeable lag in sales volume has occurred, and many real estate brokers are fearful that the "boom" has again flattened out.

Palm Springs is recognized as one of the leading winter-resort playgrounds of America. A large number of wealthy people have invested in elaborate desert estate homes here, and the growth of the community has been phenomenal.

"A Master Plan of Palm Springs Development", being a report prepared by L. Deming Tilton, Engineering Consultant, and submitted to the City Council of Palm Springs March 4, 1941, presents a comprehensive study of the entire community and a definite plan for its future growth.

This report emphasises that all even numbered sections of land in the community are owned by the Agua Caliente tribe of Mission Indians, and are consequently eliminated from the real estate market.

The "Master Plan" proposed by Mr. Tilton and adopted by the Palm Springs Planning Commission, proposes the development of Section 14, now a part of the Indian Reservation, as a large park and community center.

Other ambitious development schemes, such as construction of a tramway up the slopes of San Jacinto Mountain and establishment of one of the world's highest and best ski-jumps there, is now under construction.

These plans are considered to have a bearing on

Respondents' Exhibit "G"—(Continued)

the present market value for undeveloped lands suitable for future desert estate subdivision.

Development in Section 14: Lands in Section 14, T4S, R4E, which is a part of the Indian Reservation, adjoin the very heart of the business center of Palm Springs. Around the hot springs which exist in Section 14, and covering about 300 acres of the westerly portion of this section, plots of land of widely varying sizes and shapes, and often indefinitely outlined, have been assigned as sites for structures, trailer camps, and various activities at widely varying rentals. Development of the Indian lands has been generally formless and irregular, due to the absence of any dedicated rights of way for streets.

A portion of Section 14 immediately adjacent to Indian Avenue (the west line of this section), has been arbitrarily divided into plots of 2 acres each, with each plot having a width of 165.5 feet and a depth of 525 feet. Some of these lots have frontage on unimproved dirt streets, while others have no means of access to any defined roadway.

Arenas' Lots 46 and 47: Lots 46 and 47, allotted to Lee Arenas, are situated on the second dirt road easterly of Indian Avenue, about 330 feet southerly of the extension of Arenas Road which, westerly of Section 14, is a dedicated street near the center of the business district of Palm Springs. Each of these lots contains 2 acres, and each has been subdivided into 12 sites, which are available for

Respondents' Exhibit "G"—(Continued)

rent under a permit of use as residence or trailer sites.

According to C. H. Perdew, Assistant Superintendent, Palm Springs Indian Agency, these small lots rent to negroes, Mexicans, and "poor white trash", at an annual rental of \$100 per year for 8 inside sites and \$120 per year for 4 corner sites. Total gross revenue under this rental schedule would be \$1280 per year for each 2 acre lot, if all space is rented, or at the rate of \$640 gross income per acre per year.

Improvements constructed on these lots are all very cheap, and the entire district is unattractive, disorderly and run-down. Structures are owned by tenants who rent the land under 5-year permits with 30-day cancellation clauses.

City water is piped into this district by the Palm Springs Water Company, costs of installation of pipe line being advanced by water users under a refunding agreement.

Water Supply: Palm Springs is favored by having an ample supply of good quality water, which is adequate for any future growth of this desert resort community over a long future period.

The Palm Springs Water Company owns the flow of Chino Creek (averaging 140 miner's inches), Snow Creek, (averaging 75 miner's inches) and two wells at the north end of town, (producing 110 miner's inches). This water company is now entirely free of funded debt, and has storage facilities and a distribution pipe line system adequate for a

Respondents' Exhibit "G"—(Continued)
population over twice the present size of the community.

Domestic water from the Palm Springs Water Company is now connected without cost to users in developed subdivisions, the rate being graduated from \$1.15 for 400 cu. ft. or less, to 10c per 100 cu. ft. for all over 25,000 cu. ft. per month.

The Whitewater Mutual Water Company owns 500 miner's inches of the gravity flow of Whitewater River, which is piped to the city by 14 miles of steel pipe line under 75 lbs. pressure. This water is utilized by shareholders of the company for irrigation of lawns, gardens and landscape features. Cost of this water is very reasonable, being \$16 annually per meter connection, plus assessments which average 80c per share per year. Based on 2 shares of stock per acre, the average water cost is only \$17.60 per year per acre.

Water Supply to Arenas' Lands: As above stated, Lots 46 and 47 in Section 14 are served by the Palm Springs Water Company, under the city's domestic water supply system.

All the Arenas' lands in Section 26 are within the "irrigable area" of the Palm Springs Indian Reservation. The Indians own water rights in Andreas Canyon, Murray Canyon and Palm Canyon, which provide a sufficient flow of gravity water to supply the present and probable future needs of the lands in Section 26, which are classed as potentially irrigable. This gravity flow water is piped to Section 26 in concrete pipe lines.

Respondents' Exhibit "G"—(Continued)

Lots 39 and 40, being 5 acres each, in Section 26, are also served by the Palm Springs Water Company. Two main distribution lines of the city domestic water system, (4" and 6" respectively) are on Palm Canyon Drive at the west side of Section 26, and on the Palm Springs—Indio State Highway, along the north side of the section.

Tenants on Lots 39 and 40 have the right to connect to existing city water system at the usual rates for service.

It is presumed that the city water lines would be extended to serve the additional Arenas acreage in Section 26, if this area were developed, under the customary refunding plan for payment of costs of installation.

Topography, Soils, and Development of Arenas' Lands: Lots 46 and 47, in Section 14, are nearly level land, with a good sandy silt soil. They are well adapted to irrigation agriculture, but are now being utilized for rental sites for small houses, trailers, etc.

Lots 39 and 40, in Section 26, are fairly level to slightly undulating. The soil is principally a coarse sandy loam, but has previously been under cultivation and irrigation. A portion of these two 5-acre lots were once included in an apricot orchard. There are numerous large cottonwoods and other shade trees growing on the area.

Practically all of the land in Lots 39 and 40 is now utilized for small cabin sites, trailer parks and cheap shacks. There is no defined street system, and

Respondents' Exhibit "G"—(Continued)
the entire development is a "hodge-podge" of ramshackle structures, auto trailers and poorly constructed dwellings.

The buildings and structures on Arenas lands are owned by tenants, who pay rent directly to Arenas or his agents, and none of these improvements are included in this appraisal.

The 80 acres of undeveloped desert land in the NW $\frac{1}{4}$ of Section 26 held under Trust Patent for Lee Arenas is typical raw desert acreage, covered with greasewood, cactus and other desert growth. Many small swales and washes cut the surface. The easterly portion of the area is subject to flood hazard by storm water run-off from Murray, Andreas and Palm Canyons.

Highest Use and Adaptabilities of Arenas Lands: Lots 46 and 47 in Section 14, as previously stated, are best adapted to use as cabin and trailer sites, and under existing conditions can be rented at a good rate for such use.

Any development of these lots for higher type of residence or business income subdivision would depend entirely upon a similar development of tribal lands of the Indian Reservation which surround them.

Zoning restrictions of the City of Palm Springs, which classifies these lots in Zone R-1A, for single family residences only, may not be enforceable as to Indian Reservation lands, but no building permits will be issued, nor city water or sewer connections permitted to non-conforming users of these lands.

Respondents' Exhibit "G"—(Continued)

Lots 39 and 40, in Section 26, each have 330 feet of frontage on Palm Canyon Drive, and are located across the street from a high-class residential subdivision.

If held in private ownership, it is conceivable that these two 5-acre lots could be cleared of their present unsightly structures, and subdivided into desirable homesites. The location and environment is good, and city water and utilities are available on the land.

The 80 acres of desert land in Section 26, which is at present undeveloped, could be gradually subdivided as demand for desert homesites increases, or a portion of the area could be utilized for a trailer park. This land is also well adapted to development as a combination "dude ranch" and desert estate subdivision, similar to the "Smoke Tree Ranch" in Section 25, adjoining on the east.

This area is comparatively free from severe desert winds, and could be readily protected from erosion hazards. Access to existing paved roads on the west and north lines of Section 26 could be had by constructing roads on quarter section lines, or across lands in Lots 39 and 40, in Arenas' ownership.

Any development of these lands as suggested, is dependent upon their ownership in fee, as restrictions of the Trust Patent now held by Arenas, do not permit financing of any ambitious development, nor the sale of any portion of the property.

Fair Market Values: According to the consensus of opinion among active real estate brokers and

Respondents' Exhibit "G"—(Continued)

subdividers with long experience in Palm Springs, no undeveloped desert acreage in this community, even though adapted to residential subdivision, has a value in excess of \$2500 per acre. Costs of subdivision, installation of improvements, and selling costs make it impossible to gain a profit commensurate with the risks involved if a price in excess of \$2500 per acre is paid for the raw land.

Despite these opinions, the developed portion of Lee Arenas' lands (i.e., lots 46 and 47 in Section 14, and Lots 39 and 40 in Section 26) are now rented at unusual rates, and are bringing the owner a net income variously estimated at from \$20,000 to \$32,000 per year.

If these lands were owned in fee by Lee Arenas, and could be sold by him, it is my opinion that they could still be operated on a lease-rental basis, for cheap homesites, trailer camps, etc.

Capitalized Value: In addition to a careful consideration of the present real estate market for comparable properties in this vicinity, as reported under "Market Data" in the joint factual data report accompanying this appraisal, consideration has been given to the capitalized value of the rented portion of the Arenas lands.

In my opinion, the risks involved in such rentals, and the possibility of interference by City Zoning restrictions, would make any prudent buyer demand

Respondents' Exhibit "G"—(Continued)

a minimum return of 10% upon his investment in these lands.

Capitalizing the probable rental value of the Arenas' lots, as shown by present rental rates, established by the Indian Agency on adjacent properties (See Market Data, Items 16, 17, 18) at 10% per annum, we find the value of the Arenas lots to be as follows:

Lots 46 and 47, Section 14—4 Acres:

Each lot contains 2 acres, subdivided into 12 rental sites, with a gross rental schedule of \$640 per acre per year.

Gross income of \$640 per year, capitalized at 10%, gives a capitalized value of \$6,400 per acre.

4 acres at \$6,400 per acre.....\$ 25,600

Lots 39 and 40, Section 26—10 Acres:

These lots have a combined frontage of 660 feet on Palm Canyon Drive, and are zoned R-1 for a depth of 150 feet. This area contains 2.27 acres.

Comparable property on Palm Canyon Drive, farther from town, is now renting at the rate of \$700 per acre per year. (See Market Data, Item 18). It is believed that Lee Arenas is renting lands in Lots 39 and 40 at a rate exceeding this sum.

Recent sales of residence lots on Palm Canyon Drive (See Market Data, Items 1 and 2) indicate a present market value for this frontage of \$50 per front foot, for subdivided lots, with all utilities available.

The Palm Canyon frontage of this property, as unsubdivided land, is considered to have a value, whole-sale, of \$35 per front foot, for a depth of 150 feet.

2.27 Acres (660 ft. x 150 ft.) 660 frt. ft. at

\$35 per front foot.....\$ 23,100

Sub-Total\$ 48,700

Remainder of Lots 39 and 40:

7.73 acres, with city water, now rented for use as small residence sites, cabin sites and auto trailer parks;

Respondents' Exhibit "G"—(Continued)

adapted to desert estate or residential subdivision:	
At average \$7,350 per acre.....	\$ 56,900
80 acres undeveloped desert land in NW¼ of Section 26, with water rights, but no water piped to land; adapted to "dude ranch" and desert estate subdivision:	
At average \$1,750 per acre.....	140,000
<hr/>	
Total.....	\$245,600
Fair Market Value of Fee Title to Arenas Lands as of February 9, 1948 (Adjusted to nearest \$5,000).....	
	\$245,000

Summary of Qualifications of Donald C.
Jones, Appraiser

Born: Madison County, Montana, October 30,
1896.

Education: University of Wisconsin, 1915-1917;
1st Lieut., 15th US Cavalry; AEF France, 1917-
1919; University of California (Berkeley) BA De-
gree 1921.

General Experience:

Foreman, Bastanchury Ranch Co., Orange Co.—
1921-24.

Owner and operator, various citrus groves, ranch
properties and income properties in Orange, River-
side, San Diego, and Los Angeles Counties, 1924
to present time.

Member, Board of Directors, Orangethorpe Citrus
Assn. (1924-26).

Member, State Agricultural Advisory Commit-
tee (1928-30).

Field Representative, California-Arizona Citrus
Marketing Commission (1934-35).

Member, Board of Directors, Brea Lemon Grow-
ers, Inc.

Respondents' Exhibit "G"—(Continued)

Partner, Prizer Manufacturing Company.

Partner, Valley View Ranch, Brea, operating 300 acres lemons in Orange County—1941 to present time.

Real Estate and Appraisal Experience:

Licensed Real Estate Broker, California, continuously since 1927.

Bought and sold for own account, and acting as broker for clients, numerous citrus, farm and income properties throughout Southern California since 1926.

President, Fullerton Realty Board (two terms) 1928-30.

Member, California Real Estate Association.

Member, National Association of Real Estate Boards.

Member, Institute of Farm Brokers.

Member, American Right of Way Association.

Member, American Institute of Real Estate Appraisers.

Actively engaged in appraisal of all types of real estate throughout Southern California continuously since 1928.

Appeared as expert witness on market value of real property in civil actions and condemnation cases in the Federal Courts, and in the State Superior Courts of Orange, Riverside, San Bernardino, Ventura, and Los Angeles Counties.

Among many individuals, corporations and public bodies employing my services as an appraiser, the following is a partial list of more important clients:

The Title Insurance & Trust Company of Los Angeles.

Respondents' Exhibit "G"—(Continued)

The Italian Vineyard Company. Appraisal of 5,000 acres vineyard, winery and plant.

Board of Supervisors of Orange County.

Orange County Flood Control District. Appraisal of 8,000 acres of agricultural lands in Riverside and San Bernardino counties affected by Prado Flood Control Basin; Railroad and Highway relocations, witness in condemnation cases affecting same.

The Metropolitan Water District of Southern California: Chief Appraiser (1932-42) on per diem contract; Appraisal of all lands and property affected by Colorado River Aqueduct and appurtenant works, from Colorado River to 13 Member Cities of the District, including rights-of-way for pipelines, tunnels, transmission lines; roads, reservoirs, camp and construction areas. Witness in all civil cases affecting real property.

The Santa Ana Valley Irrigation Company: Appraisal of all real estate holdings of this public utility in Riverside, San Bernardino and Orange counties.

The Federal Land Bank of Berkeley: Appraisal of citrus and ranch properties in Orange, Riverside and San Bernardino counties for bank loans.

The Federal Intermediate Credit Bank.

The Federal Reserve Bank of Los Angeles.

The Federal Works Agency: Appraisal of Los Angeles Hotel properties.

The Irvine Ranch Company: Appraisal of over 4,000 acres of highly developed farm properties in Orange County being taken by Federal Government for war purposes.

Respondents' Exhibit "G"—(Continued)

The Moulton Ranch Company: Partition of 22,000 acre stock ranch.

The Bastanchury Ranch Company: 2,500 acre citrus property.

Azusa Foothill Citrus Company: 600 acre citrus groves.

The Consolidated Rock Products Company.

The United Concrete Pipe Company.

The Union Pacific Railroad: Appraisal of walnut, citrus and farm properties in Northern Orange County and Whittier district affected by railroad right-of-way. Witness in Federal Court re same.

State of California, Division of Highways; Division of Beaches & Parks.

The Riverside County Counsel.

The Los Angeles County Counsel.

The United States Engineers: Appraisals throughout Southern California of many types of real estate being acquired by United States for Flood Control projects, army bases, airports, etc.

The United States Navy: Appraisal of lands being taken for airports, naval bases, bombing ranges, harbor improvements; San Diego Aqueduct Right-of-Way.

Department of Justice, Lands Division: Appraisal of many types of rural, city, and harbor properties being acquired by various Federal Agencies in condemnation proceedings, throughout Southern California. Witness in Federal Court re same.

Appraisal of 10,000 acres in San Joaquin Valley

Respondents' Exhibit "G"—(Continued)
affected by the Central Valley Project, US Bureau
of Reclamation.

Additional Qualifications of Donald C. Jones
as an Appraiser of Properties in the
Palm Springs District

I first became familiar with real estate value in Palm Springs and vicinity in 1928 and 1929, at which time I was acting as a real estate broker, handling transactions involving the exchange of citrus properties in Orange County for residential income property and business frontage lots on Palm Canyon Drive in the center of the developed section of the community.

In May, 1938, I was employed by Pearl McManus of Palm Springs, and her attorney, E. Heber Winder of Riverside, to appraise approximately 500 acres of land in Sections 19 and 29, T4S, R5E, owned by Pearl McManus. These properties were the subject of a damage suit (Pearl McManus vs. Smoke Tree Ranch) in the Superior Court of Riverside County. The litigation involved the question of depreciation in market value to the properties occasioned by a flood in Palm Canyon in 1937.

An extensive survey of the real estate market in Palm Springs and vicinity was made by me at that time, and I personally inspected practically all of the undeveloped acreage and the areas which at that time were being subdivided and offered for sale.

Attorneys for the plaintiff, Pearl McManus: E. Heber Winder and Vincent Morgan; attorney for

Respondents' Exhibit "G"—(Continued)
defendant, Smoke Tree Ranch (Mr. Markham of Pasadena was the principal owner): H. L. Thompson of Riverside.

In May, 1943, I was employed by the United States Engineers to appraise properties in Section 13, T4S, R4E, and Section 19, T4S, R5E, in the city limits of Palm Springs, being acquired by the United States Government for the Palm Springs Ferry Command Airport Expansion, and for a sewage disposal plant site. My written appraisal report covering these properties was submitted to the Office of the Division Engineers in Los Angeles on May 21, 1943.

Following my employment for the United States Army Engineers, I was employed during the period August to October of 1943 by the Lands Division, Department of Justice, to appraise properties being taken by the United States Government for expansion of the Torney General Hospital (formerly El Mirador Hotel), case No. 2689-BH; the Palm Springs Army Air Base, case No. 2654-Y; and the Sewage Disposal Plant Site and Right of Way for Pipeline and Road, cases No. 2478-BH and No. 3014-O'C. I also appraised leasehold rights being acquired by the United States Government on areas leased for the expansion of the Palm Springs Army Air Base (case No. 2800-BH).

These appraisal assignments required a detailed study of the real estate market in Palm Springs and vicinity, and an investigation of the sales and listings on all types of residential and business properties, as well as undeveloped desert acreage.

Respondents' Exhibit "G"—(Continued)

My written appraisal report on the Palm Springs Airport, the Torney General Hospital, and the Right of Way for Sewer Lines and Roads was submitted to the Lands Division, Department of Justice, attention Mr. Alexander W. Staples, Special Attorney, on September 27, 1943.

In January, 1944, I was again employed by the Lands Division, Department of Justice, to re-appraise a business property known as "The Skeet Club", which had been taken for expansion of the Ferry Command Airport Expansion. This property was owned by Carl Bradsher, who was represented by Attorneys Roy W. Colgate and H. L. Thompson of Riverside, in Condemnation Case No. 2654-Y. The appraisal required a study of the adaptability of the property for use as a gun club and sportsmen's recreational area. The property is located in Section 13 on Ramon Road, approximately two miles east of Palm Canyon Drive, the main business street of Palm Springs.

Factors Considered in Determining the Market
Value of the Lee Arenas Trust Patent

Assuming that the trust patent rights held by Lee Arenas in these lands can be sold, or assigned to a purchaser, and

Assuming that the trust patent rights so assigned would be subject to all the existing restrictions and limitations now imposed upon these rights with the exception of the right to convey these trust patent rights, it is my opinion that the fair market value

Respondents' Exhibit "G"—(Continued)
of these trust patent rights is 20% of the Fee Value of the Property.

Fee value appraised at \$245,000; 20% of \$245,000—\$49,000.

Fee Market Value of Trust Patent Rights adjusted to \$50,000.

This opinion is based on the following factors:

1. Present trust patent rights held by Lee Arenas continue until 1952, at which time he has the right to receive a fee patent to this property; consequently, a purchaser of the trust patent rights would be restricted until 1952 to the use of the lands now enjoyed by Arenas, and subject to the regulations of the Secretary of the Interior.

2. The President of the United States has the authority to extend the period of the trust patent for an additional 25 years, and any prudent buyer of this trust patent right would be advised that the President has seen fit to extend similar trust patent rights of Indians on many occasions in the past.

3. The holder of the trust patent rights would be unable to use the property for collateral for any loan, and would be unable to lease the property, except under the rules and regulations established by the Commissioner of Indian Affairs and the Secretary of the Interior which, at the present time, are limited to the granting of a permit to use the property for a period not exceeding 5 years, said

Respondents' Exhibit "G"—(Continued)
permit containing a clause that the permit may be terminated at any time upon 30 days notice.

4. Any use of the properties for rental or other income producing uses would be in competition with all other tribal Indian lands adjoining the property, and the risks created by such competition and use of adjacent lands in tribal ownership would be considered by any prudent purchaser of these trust patent rights as a factor greatly limiting the future possible development of the land.

Conclusion

In other words, it is my opinion that no prudent buyer having knowledge of all of the facts involved in the ownership of a trust patent of this nature would risk a capital investment for the purchase of such rights for any sum in excess of 20% of the full fee value of the property.

Admitted in Evidence 2/20/48.

RESPONDENTS' EXHIBIT "H"

In the District Court of the United States In and
For the Southern District of California
Central Division

No. 1321-O'C Civil

LEE ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

TESTIMONY OF BERNARD G. EVANS AS TO
HIS QUALIFICATIONS AS AN EXPERT
REAL ESTATE APPRAISER.

Pursuant to the Order of this Court made on Friday, February 13, 1948, the following testimony of Bernard G. Evans as to his general and special qualifications as an expert real estate appraiser is hereinafter set forth in question and answer form and subscribed to by said witness:

Q. Where do you live, Mr. Evans?

A. In the City of San Bernardino, California.

Q. How long have you resided there?

A. Since 1932.

Q. What is your occupation?

A. Real estate broker, appraiser, and subdivider.

Q. Are you a licensed real estate broker?

A. Yes. I have been a licensed real estate broker since 1923 with the exception of a three-year period from 1932 to 1935 when I was a deputy in the State

Respondents' Exhibit "H"—(Continued)
Division of Banking, and three and a half years from the fall of 1942 until early 1946, during which time I was in active service in the Marine Corps.

Q. How old are you, Mr. Evans?

A. 48.

Q. What education have you had?

A. I was educated in the public schools of Santa Monica and graduated from the California Institute of Technology in Pasadena in 1923.

Q. In connection with your activities as a real estate broker, have you had occasion to make appraisals of fair market value of real estate?

A. Yes, I have.

Q. During your activity as a real estate broker, have you engaged in any real estate activities on your own account?

A. Yes, rather considerably.

Q. Have you had occasion to deal with raw land which had not been subdivided, in selecting, designing, and improving properties which became actual subdivisions and were disposed of as such?

A. Yes. That was my principal activity from 1923 to 1932, and I have continued in such activity up to the present time.

Q. Are you engaged in subdividing properties at the present time?

A. Yes. I have four subdivisions in various stages of development and completion now.

Q. Where are they located?

A. One in the City of Riverside, two in San Bernardino County near the City of San Bernardino,

Respondents' Exhibit "H"—(Continued)

and one in Santa Monica, which consists of some 20 acres of the Ranch of the former Will Rogers.

Q. Has that activity included not only the selection and supervision of subdivision property, but also the ascertainment of the varied requirements of the law and the monetary requirements for such development?

A. Yes.

Q. Have you had any such properties in or near Palm Springs?

A. Yes, in 1925, a firm of which I was an officer and stockholder, entered the Palm Springs area as sales agent on a tract of approximately 100 acres, known as Merito Vista, and in 1926 we purchased 100 acres of raw land which was developed into a subdivision of approximately 210 residential lots and which was known as Las Palmas Estates.

Q. Where were these subdivisions located with reference to the present center of Palm Springs?

A. They are both in Section 10, Merito Vista being on the west side of Palm Canyon Drive, approximately one-half mile north of the center of town, and Las Palmas Estates being adjacent to Merito Vista on the north.

Q. In connection with your activities as an appraiser, have you made appraisals for any banks?

A. Yes, I have made numerous bank appraisals from 1936 until I entered the service in 1942. I was a field appraiser for the Bank of America on a retainer basis. I have also made appraisals for other banks and trust companies.

Respondents' Exhibit "H"—(Continued)

Q. Have you made appraisals for various agencies of the United States Government?

A. Yes.

Q. What agencies?

A. The U. S. Army Engineers, the Lands Division of the Department of Justice, the Federal Works Agency, the Federal Housing Authority, and for the Veterans Administration.

Q. Have you appraised for the State of California or any of its agencies?

A. Yes. I have made numerous appraisals for the State Division of Highways, the State Department of Finance, State Banking Department, and the California Veterans Board.

Q. Have you made appraisals for any Counties in Southern California?

A. Yes, I have appraised for the County of San Bernardino on a number of occasions.

Q. Have you appraised for the City of San Bernardino?

A. Yes, and at the present time I am engaged in an appraisal for the City of San Bernardino involving the possible acquisition of a site for a civic center.

Q. Have you appraised for any school districts?

A. Yes, I made a number of appraisals and purchases as an agent for the San Bernardino School District, the San Bernardino Primary School District, Colton Union High School District, and the Mission School District near Redlands.

Respondents' Exhibit "H"—(Continued)

Q. Have you made any appraisals for the public utility bodies in this area?

A. Yes, I have made appraisals for the Southern California Edison Company, the Santa Fe Railroad, and the Union Pacific Railroad.

Q. Have you made any appraisals for either water irrigation or flood control districts?

A. I have appraised several thousand acres in the Prado Basin for the Orange County Flood Control District, and later for the Army Engineers who took over the project, and I also made several appraisals for the Metropolitan Water District and am at the present time engaged on an appraisal for the Metropolitan Water District involving lands in the vicinity of Needles, California.

Q. Have you made appraisals for any private corporations or private individuals?

A. Yes. In addition to the banks which I have enumerated I have done some appraising for the Trust Department for the Bank of America, the Security-First National Bank of Los Angeles, for the American National Bank of San Bernardino, Citizens National Trust & Savings Bank of Riverside, the Pioneer Title Insurance and Trust Company, the Metropolitan Trust Company, the First Federal Savings and Loan Association of San Bernardino, the Santa Fe Federal Savings and Loan Association of San Bernardino, the Occidental Life Insurance Company, the Equitable Assurance Society of the United States, for which society I am at the present time a fee appraiser, for the Triangle Rock

Respondents' Exhibit "H"—(Continued)
& Gravel Company, the Loma Linda Foundation of the College of Medical Evangelists, and numerous individuals. Last year I appraised several thousand acres of resort lands surrounding Lake Arrowhead as an associate of the American Appraisal Company, the appraisal being made for the Santa Anita Turf Club.

Q. Have you had other experience in appraising resort properties—in the active subdivision of resort developments?

A. Yes, a good deal of my subdivision activity has been in connection with the development of properties in resort areas, such as La Jolla, Laguna Beach, Balboa, Big Bear Valley, and Palm Springs, as well as appraisal experience in other desert communities, such as Indio, Apple Valley, and Lucerne Valley, the latter two being communities in the Mojave Desert.

Q. With what projects were you identified at La Jolla?

A. A subdivision known as the La Jolla Shores, which was a development of 100 acres fronting along the beach immediately adjacent to the then built-up section of La Jolla.

Q. What subdivision activity were you engaged in at Laguna Beach?

A. For several years we were tract managers and sales agents of the development known as Emerald Bay.

Q. What subdivision activity were you connected with at Balboa and its environs?

Respondents' Exhibit "H"—(Continued)

A. The development generally known as Lido Isle in Balboa, in the 1920's.

Q. What particular reference to Palm Springs and its immediate environs have you had any additional subdivision experience, appraisal activity, or have you engaged as a real estate broker in connection with any properties in that vicinity which you have not already referred to?

A. I made several appraisals for the Division of Highways not within the City of Palm Springs, but between Palm Springs and Indio, and between Palm Springs and Banning, and, quite recently, I was designated as one of three Veterans Administration appraisers to complete an appraisal report on a project involving 233 residence units in a new subdivision known as the Tahquitz River Estates located in Section 23 and which is now in process of development. In 1939 I made an appraisal of El Mirador Hotel at Palm Springs in connection with the refinancing of the existing mortgage or bond issue. I believe this was the Occidental Life.

Q. When were you employed to make appraisals in this case?

A. About January 15, 1948.

Dated: February 17, 1948.

/s/ BERNARD G. EVANS

Admitted in evidence 2/20/48.

RESPONDENTS' EXHIBIT "I"

APPRAISAL REPORT

[Letterhead of Bernard G. Evans]

February 7, 1948

Lands Division, Dept. of Justice
808 Federal Building
Los Angeles, California

Attention: Mr. Irl Brett, Special Assistant to the
Attorney General

Gentlemen:

Re: Arenas vs. U.S.A. Case No. 1321—WM

Pursuant to your authorization and request I have made an appraisal of the Arenas properties in the City of Palm Springs, the legal descriptions of which were furnished by your office.

In my opinion the fair market value of the fee title of the properties is the sum of Two Hundred Eleven Thousand Five Hundred Dollars (\$211,500.00).

The complete report on these properties is enclosed herewith and further information is contained in the volume of supplementary data made a part hereto.

Very truly yours,

/s/ BERNARD G. EVANS, M.A.I.

BGE:s

Respondents' Exhibit "I"—(Continued)

Estimate of Value

Having made a careful examination of the following described properties in the City of Palm Springs, California, and having made a thorough investigation of the factors effecting the market value thereof,—as a result of such examination and investigation and by virtue of my experience, I am of the opinion that the present fair market value thereof is as follows:

Parcel (a) Allotment Tracts 46 & 47, of Section 14, Township 4 South, Range 4 East, S.B.B.M. Consisting of 4 acres, m/1	\$ 25,000.00
Parcel (b) Allotment Tracts 39 & 40, of Section 26, Township 4 South, Range 4 East, S.B.B.M. Consisting of 10 acres, m/1	\$ 66,500.00
Parcel (c) E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, and the SE $\frac{1}{4}$ NW $\frac{1}{4}$, all in Section 26, Township 4 South, Range 4 East, S.B. B.M. Consisting of 80 acres, m/1.....	\$120,000.00
Total	<hr/> \$211,500.00

The above estimate of value is subject to the qualifying conditions set forth on the following page.

/s/ BERNARD G. EVANS, M.A.I.

Value of the Trust Patent

It is most difficult to set a figure which would represent the fair market value of what is known

Respondents' Exhibit "I"—(Continued)

as the Trust Patent to the subject lands. Such Trust Patent would appear to give the holder thereof the right to receive the fee title at some later and wholly indeterminate date. According to present laws neither the Trust Patent nor any interest therein is assignable except with the permission of the Secretary of the Interior. While it has been customary to allow some of the Indians who hold allotted lands to enter into leases in their own behalf these leases can apparently be cancelled on thirty days notice by the Indian Office in Palm Springs. It would appear that any purchaser for the Arenas interest would be buying a "pig in the poke". While it is undoubtedly true that Arenas is now receiving a very substantial income from his lands and has been receiving such an income for some years past, nevertheless it appears from a perusal of existing statutes that this income could be cut off on very short notice.

Taking all things into consideration I doubt very much whether the current market value of the Arenas interest in the subject property as such interest exists today, exceeds 25% to 30% of the fair market value of the fee.

Qualifying Conditions

The foregoing certificate of value and the contents of this appraisal report are subject to the following limiting conditions:

1. The legal description furnished me is assumed to be correct.

2. I assume no responsibility for matters legal in character nor do I render any opinion as to the

Respondents' Exhibit "I"—(Continued)

title, which is assumed to be in fee simple. All existing liens and incumbrances have been disregarded and the property is appraised as though free and clear. It is assumed that there exist no undisclosed restrictions or prohibitions concerning the possible development of the property for any purpose to which it appears adapted.

3. Areas, measurements and location of the subject property are assumed to be as shown on the map of the Palm Springs Indian Reservation on display in the office of the Indian Agent, in Palm Springs, California.

4. I believe to be reliable the information furnished me by others, but I assume no responsibility for its accuracy.

5. Possession of this report, or a copy thereof, does not carry with it the right of publication, nor may it be used for any purpose by any but the applicant without the previous written consent of the appraiser or the applicant and in any event only with proper qualification.

6. I have no present or contemplated interest in the property appraised.

7. This appraisal has been made in accordance with the rules of professional ethics of the American Institute of Real Estate Appraisers, of which I am a member.

Scope of Investigation

Legal descriptions of the property under appraisal were obtained from the office of the Lands Division of the Department of Justice. The exact

Respondents' Exhibit "I"—(Continued)

location of the subject lands were ascertained by examining maps of the Indian Reservation in the office of the Indian Agent at the Palm Springs Indian Reservation. Mr. Howard Perdew, the resident agent on the Palm Springs reservation was interviewed and information was obtained from him concerning the present uses of the Arenas properties, as well as the various restrictions controlling their use which have been imposed by the Department of Indian Affairs or the Secretary of the Interior. In company with Mr. Donald C. Jones I made a careful field inspection of all of the Arenas lands. The uses and development of surrounding and nearby lands were carefully noted in order to afford a basis for determination of the highest and best uses of the subject lands.

We then called on Mr. and Mrs. Austin McManus, long time residents and property owners of Palm Springs. The property holdings of Mr. McManus probably exceed those of any other person in Palm Springs area. She has long been active in the development of the community and is considered to be unusually well informed on land values. During the past year or two she has sold a number of parcels of acreage in the general area in which the subject lands are situated. We then called on a number of real estate brokers in Palm Springs in order to obtain from them their opinions as to the current market value of the subject properties. At the same time we secured from these real estate brokers data with respect to recent sales and offer-

Respondents' Exhibit "I"—(Continued)

ing of property in the general vicinity of the subject properties, and adaptable to the same purposes for which the subject lands appear to be adapted. We then made another field tour in order to inspect the listings which we had obtained of properties currently for sale as well as to examine on the ground properties which had been reported as having sold within the past year or two. We then called on Mr. Fred Ingram, manager of the local branch of the Bank of America, in order to discuss recent development in the Palm Springs area with which he might be familiar.

Zoning maps of the City of Palm Springs were examined in order to determine the uses to which the subject property could legally be put if they were considered to be private lands. There appears to be some doubt as to the effect of the zoning ordinances of the City of Palm Springs on land lying within the Indian Reservation. We found however that the Indian Agent is disposed to cooperate with the City of Palm Springs in enforcing zoning ordinances.

Inquiry was made as to current requirements of the City of Palm Springs with respect to creating new subdivisions. It was found that subdivision costs are substantially higher than they were a few years ago, particularly because the City now requires that all streets in newly platted subdivisions be surfaced by the developers.

A final interview was held with the Indian Agent for the purpose of discussing ground leases which

Respondents' Exhibit "I"—(Continued)

he has made on behalf of the Indians. A map was then prepared showing thereon the location of the subject property and also showing thereon the location of properties which have been sold within the past year or so together with the location of other properties currently offered for sale. Photographs of the subject property, of some of the nearby properties, the map herein referred to and complete information with respect to the sale and offering of comparable properties in the locality will be found in the volume of supplementary data accompanying this report. Names of persons interviewed are also set forth.

Legal Description (Parcel A)

Tracts 46 and 47, in Section 14, Township 4 South, Range 4 East, S.B.B.M., in the City of Palm Springs, County of Riverside, California.

General Description (Parcel A)

This parcel consists of 4 acres, more or less, on the West side of an undedicated street which lies two blocks East of Indian Avenue, said parcel being 330 feet South of the Easterly prolongation of the South line of Arenas Avenue. The land is relatively level, on grade with the street, and has a frontage of 330 feet on the undedicated street above referred to, and has a depth of 525 feet. There are no street improvements. Domestic water, gas and electricity are available to the property. Improvements consist of five or six small frame and frame stucco cottages, three of which face the street, and the re-

Respondents' Exhibit "I"—(Continued)

mainder of which lie some distance to the West of the street frontage. On the opposite side of the street are two community buildings, one a church, and the other some type of lodge hall. Surrounding and nearby improvements are dominantly frame cottages which are little more than shacks. Residents of the immediate area are apparently all colored people, and are presumably employed as domestic servants, restaurant help, etc., in Palm Springs.

Zoning maps of the city of Palm Springs show the subject as being in R-1 zone, i.e., for single family residence use only.

Highest and Best Use

For the present, and so long as Section 14, or any considerable part of it, remains as tribal lands, the highest and best use of the subject land would appear to be for modest dwellings, i.e., to a large extent for the purpose to which it is now devoted.

Estimate of Value

Based on what I consider to be the highest and best use, as well as all other uses to which the property appears reasonably adaptable, I am of the opinion that the fair market value of the fee is the sum of Six Thousand Two Hundred Fifty Dollars (\$6,250.00) per acre, or a total of Twenty-Five Thousand Dollars (\$25,000.00).

Basis of Valuation

It is impossible to establish the value of the subject by the comparative method. The rules and regu-

Respondents' Exhibit "I"—(Continued)

lations of the Indian Affairs Office permit the construction of as many as twelve cottages on one of these two acre tracts. Similar tracts are leased by the Indian Agent for the benefit of the tribe, on a basis of One Thousand Two Hundred Eighty Dollars (\$1,280.00) annually. It is presumed therefore that the subject parcel could be leased on an equal basis, and that at the present time an annual ground rental of approximately Two Thousand Five Hundred Dollars (\$2,500.00) could be obtained for the two parcels. The value of Twenty-five Thousand Dollars (\$25,000.00) has been partially based on a capitalization of the estimated income, using a rate of 10%. It is not believed that a purchaser could be attracted by any lower rate of return than 10%. Residential lots of equivalent size in adjacent sections, in improved and restricted subdivisions, would bring a somewhat higher figure than the above.

Legal Description (Parcel B)

Tracts 39 and 40, in Section 26, Township 4 South, Range 4 East, S.B.B.M., in the City of Palm Springs, County of Riverside, California.

General Description (Parcel B)

This parcel consists of 10 acres, more or less square, situated on the East side of Palm Canyon Drive approximately 750 feet South of the junction of Palm Canyon Drive and the state highway from Palm Springs to Indio. Palm Canyon Drive is paved with macadam, and is relatively heavily traveled. Virtually the entire parcel has been improved with small cottages, cabins, trailer facilities and numerous

Respondents' Exhibit "I"—(Continued)

trees. All utilities except sewer serve the property. Improvements in the nature of cabins, cottages and trailer facilities are presumed to be the property of tenants holding ground leases, and no attempt is made to place a market value on such improvements in connection with the land. There are a number of good single family residences along the West side of Palm Canyon Drive opposite the subject property, although much of the frontage on that side is vacant. Further to the West, against the foot of the mountains, are numerous fine homes. Adjacent on the North, East and South are unimproved desert lands.

Zoning maps of the City of Palm Springs show the Westerly 150 feet of the subject as being zoned for single family dwellings, while the remainder of the parcel is zoned for trailer camp purposes.

Highest and Best Use

The Westerly 150 feet of the subject parcel is limited to dwelling use by zoning laws. The highest and best use of the remainder is for trailer camps, auto courts, rental cottages, and similar developments.

Basis of Valuation

Subject parcel has a frontage of 660 feet on Palm Canyon Drive. Recent sales and current offerings of residence sites on Palm Canyon Drive opposite the subject indicate a retail value of \$50.00 per front foot. The value of the 660 foot frontage to a depth of 150 feet is therefore estimated at \$30.00

Respondents' Exhibit "I"—(Continued)

a front foot, or a total of \$19,800.00. The remaining property, consisting of approximately 7.8 acres, is valued at \$6,000.00 per acre, for a total of \$46,800.00, and the value of the entire parcel at \$66,500.00.

On a wholesale basis the frontage value has been set at 60% of the retail selling prices,—it is not believed that a purchaser could be attracted without the possibility of profit afforded by this differential.

It was impossible to locate any land zoned for trailer camp use which had been sold in recent years or which had been offered for sale. The area within the city zoned for such use is quite limited. About 750 feet North of the subject land, on the West side of Palm Canyon Drive is a 20 acre parcel of Indian land which is so zoned, and which is currently leased for \$8,000.00 annually. On a capitalization basis of 8%, a value of \$100,000.00 is indicated for this 20 acre parcel, or at the rate of \$5,000.00 per acre. Subject property is equally well adapted for trailer camp use, and has the advantage of numerous trees affording desirable shade.

Legal Description (Parcel C)

The East $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, and the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 26, in Township 4 South, Range 4 East, S.B.B.M., consisting of 80 acres, more or less.

Respondents' Exhibit "I"—(Continued)

General Description

This parcel is rough, uncleared desert land lying 660 feet East of Palm Canyon Drive and approximately one quarter mile South of the State Highway from Palm Springs to Indio. The Northerly portion of it adjoins the East line of Parcel "B". It is wholly unimproved and has no frontage on any dedicated street or road. With the exception of Parcel "B" herein referred to abutting lands are likewise rough desert lands, wholly unimproved. The terrain is rather uneven,—the Southeast portion having apparently been cut by flood waters during past years, increasing the natural roughness of the land. For the most part it is covered with native brush.

To the West, across Palm Canyon Drive, are quite a number of expensive houses, most of them nestling against the base of Mt. San Jacinto. Half a mile to the East is the Smoke Tree Ranch development, a subdivision on medium priced desert homes. The section to the North, Section 23, is well developed with residential subdivisions, guest ranches, and some ranch-type hotels. Undeveloped Indian lands lie to the South. The elevation of this 80 acre parcel is higher than the lands to the North, and a good view is afforded to the North over the community of Palm Springs. In general it is favorably located for residential development, being well away from the so-called wind area.

Zoning maps of the City of Palm Springs indicate that approximately 30 acres are within zone

Respondents' Exhibit "I"—(Continued)
"T", (trailer camp area) while the remainder is zoned "E-2," for guest ranch use.

Present Use

None. It does not appear that any portion of this 80 acres has ever been utilized except for possible cattle grazing.

Highest and Best Use

The Westerly portion, consisting of approximately 30 acres, is suited for development into trailer camps, on the presumption that necessary utilities are available. Inasmuch as these utilities now serve property adjacent on the West it appears logical to assume that they would be available to this 30 acres. The remainder of the 80 acre parcel is best suited for development into dwelling sites or guest ranch sites. It is generally comparable to the land in Section 25 which is now used for these purposes.

Basis of Valuation

The value of this 80 acre parcel has been arrived at by comparison with other lands in the vicinity which have been sold in recent months, as well as by taking into account the costs of development for residential or guest ranch purposes. Consideration has been given to the relatively large amount of land also suited to the same type of development, and available in the open market for such purposes. Possible use of a portion of the parcel for trailer camp sites gives the parcel added value. Such portions as are zoned for trailer camp use are consider-

Respondents' Exhibit "I"—(Continued)

ably less valuable than they would be if they were situated on improved roads, or readily accessible from such roads. Were it not for the fact that a portion of this parcel could be utilized for trailer camp purposes I do not believe the fair market value would exceed \$1,000.00 per acre.

Value: 80 ac. at \$1,500.00 per acre, \$120,000.

Summary of Findings

The problem of attempting to place a fair market value on the fee simple title to the subject properties presents some rather unusual problems. Even if Arenas were assumed to have good and sufficient title to his lands the fact remains that they are surrounded by lands of the Indian Reservation, commonly known as tribal lands. While the zoning ordinances of the City of Palm Springs purport to control the present and future use of these Indian lands it appears very doubtful whether these ordinances could ever be enforced against the will of the government. In any event there appears to be no disposition on the part of government agencies to change the use of these properties from the purpose to which they are now devoted.

If all of the lands in Section 14 and 26 were to pass into private ownership, either to the Indians, or through them to other persons, and should all these lands be placed on the market, the effect on real estate values in the City of Palm Springs would be deflationary to a marked degree. It is estimated that at the present time there are enough subdivided

Respondents' Exhibit "I"—(Continued)

lots in the City of Palm Springs to provide for approximately eight times as many dwellings as now exist within the city limits. The value of Parcel "C" of the subject property, i.e., the 80 acres in Section 26, must necessarily be based to a large degree on the potentiality of this property as a subdivision. If subdivided it would be in competition with all other unsold subdivisions within the Palm Springs area, as well as in competition with offerings of unimproved lots within subdivisions previously sold out by developers. There appears to have been a great deal of speculation in Palm Springs lands and lots the past two or three years, but during the past few months this speculation has dropped off to a marked degree. Prices currently obtainable for lots and acreage are less than could have been obtained a year ago. While there is a good deal of building activity at the present time, building costs are very high,—they are estimated to be from 20% to 25% higher than in the Los Angeles area. Such high building costs have slowed up construction, and lack of construction has slowed up subdivision sales. None of the real estate brokers or subdividers contacted felt that the land in Section 26 could be subdivided to advantage at the present time. The City of Palm Springs is meeting increased competition from developments further South and East along the State Highway between Palm Springs and Indio. The development at Palm Village alone, some 18 miles to the Southeast, embraces some 1,500 acres. The permanent population at Palm Springs is

Respondents' Exhibit "I"—(Continued)

well nigh negligible, it having been variously estimated at from 1500 to 3500 persons. Actually the only people who remain in Palm Springs through the summer months are those who are engaged in business there, employees of such businesses and public utilities, caretakers of some of the larger estates and persons employed in the building trades.

My estimate of \$211,500.00 as the present fair market value of the subject property appears adequate, particularly in view of the fact that the most recent acreage sale, embracing a total of some 150 acres, with a frontage of 1320 feet on Palm Canyon Drive and situated a mile closer in to the heart of the city than the bulk of the subject property, was sold during the past few months for a consideration of \$337,500.00, \$100,000.00 of which was paid in cash with the balance payable in five years at 4% interest.

Qualifications of Appraiser

Have been engaged in real estate and appraisal business in Southern California continuously since 1923 with exception of 3½ years on active duty with the Marine Corps during the recent war.

Have been active in the subdivision and development of real property in Los Angeles, Orange, San Diego, San Bernardino and Riverside Counties.

In 1927 the corporation of which I was a stockholder and officer purchased 100 acres in Palm Springs which was developed as Las Palmas Estates, a highly restricted residential subdivision. The corporation was also the sales agent for the ad-

Respondents' Exhibit "I"—(Continued)

jacent 100 acre tract known as Merito Vista.

From 1932 to 1935 served as Special Deputy Superintendent of Banks of the State of California, the greater part of which period was as receiver of the San Bernardino County Savings Bank. Handled many properties during this period in San Bernardino and Riverside Counties.

Since 1935 have been engaged in the real estate and appraisal business in San Bernardino, California. Since that time have appraised numerous properties in Palm Springs, principally in connection with loans made by the Bank of America. I have been a field appraiser of the Bank of America for Riverside and San Bernardino Counties since 1936,—on a retainer basis until I entered the service in 1942,—on a fee basis since that time. I am also a fee appraiser for the Equitable Life Assurance Society of the United States.

Have acted as an appraiser for the following agencies, corporations and government bodies:

City of San Bernardino, County of San Bernardino, State Division of Highways, State Department of Finance, Southern California Edison Company, Metropolitan Water District, Orange County Flood Control District, College of Medical Evangelists, American Appraisal Company, Forest Lawn Memorial Park, U . S. Corps of Engineers, Pioneer Title Ins. & Trust Co., Metropolitan Trust Company, California Veterans Board, Veterans Administration, San Bernardino School District, Colton

Respondents' Exhibit "I"—(Continued)

School District, Victorville School District, Triangle Rock & Gravel Co., etc., etc.

Am actively engaged in the subdivision business at the present time, with two tracts now under sale in the San Bernardino area. Am also actively engaged in the general appraisal business.

Within the past 30 days was one of three appraisers designated by the Veterans Administration to appraise the Taquitz River Estates subdivision in Palm Springs, referred to as Item No. 4 in the volume of supporting data filed in connection with this report.

General and Special Qualifications

(Pertaining to Palm Springs
and Resorts in General)

Bernard G. Evans

From 1923 to 1932 engaged in general real estate development business with subdivision activities in Los Angeles, San Diego, Orange, and Riverside Counties. Active in resort subdivision development—i.e., La Jolla Shores, at La Jolla (owners and developers), Emerald Bay, at Laguna Beach (sales agents), Lido Isle, at Balboa (sales agents), Merito Vista, at Palm Springs (sales agents), Las Palmas Estates, at Palm Springs (partial owners, subdividers, and sales agents). The latter property was purchased as 100 acres of raw land and developed into a high type of residence tract—today ranks as the equal of any such development in the Palm Springs area.

Respondents' Exhibit "I"—(Continued)

1932 to 1935 served as Deputy Superintendent of Banks of California, supervising liquidation of various banks. In July of 1932, and following months, appraised all real estate holdings and real estate securing loans of San Bernardino County Savings Bank—principally in San Bernardino and Riverside Counties. From September 1932 to August 1935 acted as receiver for that bank.

In 1932 re-entered business on my own account in San Bernardino, and again became active in subdivision development and a general appraisal practice. From 1936 to October of 1942 was one of two appraisers for Bank of America making loan appraisals in the Palm Springs area, as well as other desert communities. During that period of time also appraised for the State Division of Highways in this area, covering right-of-way acquisition both between Palm Springs and Indio and between Palm Springs and Banning.

From October 1942 to February 1946 was on active duty with U. S. Marines.

Since February of 1946 have again been in private appraisal practice and in subdivision development.

One month ago investigated residence lot values in Palm Springs in connection with Taquitz River Estates development, and appraised 233 lots in this tract as one of three appraisers appointed for that purpose by the Veterans Administration.

Note: Las Palmas Estates, which was referred to by Gallagher in connection with Bob Hope pur-

Respondents' Exhibit "I"—(Continued)

chase, is a subdivision of 100 acres into 236 residence lots—average lots size about 15,000 square feet, not 800 square feet, as indicated by him.

Currently engaged in making following appraisals:

90 acres adjacent to State Hospital at Patton, for State Department of Finance

One city block in San Bernardino, for City of San Bernardino

Ten acre school addition in Colton, for Colton School District

Fifty-four acres in river bottom below Needles, California, for Metropolitan Water District

Several residence subdivision developments for Veterans Administration.

In 1946 appraised several thousand acres of resort properties, i.e., vacant lands surrounding Lake Arrowhead—employed by the American Appraisal Company—their client, the Santa Anita Turf Club, present owners of Lake Arrowhead.

About 1939 made appraisal of El Mirador Hotel at Palm Springs, in connection with refinancing of existing mortgage or bond issue.

In late 1920's spent a good deal of time in Palm Springs (we maintained a branch office there), and have ridden horseback over lands in Section 26 many times.

Admitted in evidence 2/20/48.

RESPONDENTS' EXHIBIT "K"

[Letterhead of David D. Sallee]

[Stamped]: Received Dec. 6, 1944. Lands Division, Los Angeles, California.

December 5, 1944

Mr. James A. Murray,
Special Assistant to the Attorney General,
Department of Justice, Lands Division,
808 Federal Bldg., Los Angeles 12, California.

Dear Mr. Murray:

In preparing the answers in the various ejectment suits filed by the United States vs. the various Indians, members of the Palm Springs Band of Indians, we find that it has become necessary that we have access to the census rolls and any and all probate records, and any other records whereby we may be able to determine the various marriages, divorces, deaths and the line of inheritance of the various parties of the above mentioned band.

Will you, therefore, arrange with Mr. Dady, Superintendent of the Mission Agency at Riverside, California so that I may inspect the aforesaid rolls and obtain therefrom the necessary information that will enable us to file the proper and appropriate pleadings in the above entitled matters, as well as all guardianship petitions and probate petitions.

Thanking you for your courtesy, I remain,

Yours sincerely,

/s/ DAVID D. SALLEE

DDS:Y

Admitted in evidence 2/20/48.

RESPONDENTS' EXHIBIT "L"

[Letterhead of David D. Sallee]

December 28, 1943

Mr. and Mrs. Lee Arenas
Palm Springs, California

Re: Lee Arenas vs. U. S. of America

Dear Mr. and Mrs. Arenas:

I did not want to take the time last night to talk to you on the telephone on long distance for two reasons; one that it was running up in unnecessary costs and second, a machine was waiting for me and I did not have the time.

Yesterday I received a telegram from Washington, D. C. from the Clerk of the United States Supreme Court requesting that an additional \$35.00 be immediately forwarded to said clerk to cover certain costs in the above entitled case. There is now due a balance of \$85.00 I have not been repaid for myself that I have sent to Washington. I have repeatedly requested that you send me in some money for the last two or three months, and it has been almost impossible to get anything out of you. You knew on November 12th when I was in Palm Springs that there was a balance of \$50.00 due me and you have neglected to send it to me. You say you have other bills, all right, if you won't protect your property you won't have anything to pay other bills, nor anything for yourself. This litigation comes first in everything. I am trying to save your property for you, and it is worth well a quarter million dollars. I am just getting tired of having

to continually argue with you over these costs.

This is the first win and it is an important win for you in your fight. The United States Supreme Court does not grant these writs unless there is real merit in the case, and I am as confident of winning this case as I am that I will be alive tomorrow. Marian you have acted very sulky and I don't like it. You folks spend money right and left, but you have got to change and spend some money to help win this fight. Of course if you don't want your property and want to be put in a gulch and have only \$25 or \$30 a month to live on, all well and good, because that is where you will end up at if you don't use real business sense and cooperate with me. Lee I want you to read this letter thoroughly and I want you to send in this \$85.00 because I need it.

I have got some more briefs to file in Washington before our hearing which will come up some time in March or April I presume, and I want a long talk with you relative to certain other matters within the next ten days. I would like to have you come to Los Angeles the first part of next week.

With kindest personal regards to yourself and wishing you a Happy New Year and awaiting your immediate response to this letter, I remain,

Your truly,

/s/ DAVID D. SALLEE

Admitted in evidence 2/20/48.

DEFENDANTS' EXHIBIT "N"

United States District Court, Southern District
of California, Central Division

No. 1321—WM—Civil

LEE ARENAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

STIPULATION

It Is Stipulated that Lots 46 and 47 in Section 14 are bounded on the North by Lot 43, on the East by Lots 29 and 42, on the South by Lot 50 and on the West by Lots 45 and 48; that allotment trust patents in severalty have been issued and delivered to members of the Palm Springs Band, other than Lee Arenas, covering Lots 42, 43, 50, 45 and 48.

That Lot 39, the 5-acre tract allotted to Lee Arenas, is bounded on the North by Lot 38 which has been trust patented in severalty to a member of the Palm Springs Band other than Lee Arenas.

That Lot 40, the 5-acre tract selected by Guadalupe Arenas, is bounded on the South by Lot 41 which has been trust patented in severalty to a member of the Palm Springs Band other than Lee Arenas.

That the 40-acre parcel allotted to Lee Arenas is bounded on the North and on the East, in part, by

lands which have been trust patented in severalty to members of the Palm Springs Band other than Lee Arenas.

That the 40-acre tract selected by Guadaloupe Arenas is bounded on the North, East and South by lands trust patented in severalty to members of the Palm Springs Band other than Lee Arenas.

In making this Stipulation, petitioners reserve the right to attack and dispute the validity and effect of such trust patents in severalty in any of the proceedings wherever now pending or which may hereafter be filed in respect to the lands of the Palm Springs Reservation, whether in their own behalf or in behalf of any present or future clients.

Dated: February 6, 1951.

ERNEST A. TOLIN,
United States Attorney,
IRL D. BRETT,
Special Assistant to the At-
torney General,

/s/ By IRL D. BRETT,
Attorneys for Respondents.

JOHN W. PRESTON,
OLIVER O. CLARK,
DAVID D. SALLEE,

/s/ By JOHN W. PRESTON,
Attorneys for Petitioners.

Admitted in evidence 2/7/51.

DEFENDANTS' EXHIBIT "O"

EXCERPTS FROM REPORTER'S TRAN-
SCRIPT OF THE PROCEEDING OF NO-
VEMBER 29, 1950

No. 6221-PH Civil

(Portions of the testimony of
Joseph A. Gallagher, Sr.)

By Mr. Preston:

Q. Mr. Gallagher, you are a resident of the City of Los Angeles? A. I am.

Q. And you have a profession that you follow. What is it?

A. I am a licensed real estate broker and an appraiser, and president of the American Right of Way and Appraisal Contractors.

Q. That company that you last mentioned is a concern organized by you? A. Yes, sir.

Q. How long has it been in existence?

A. About five years.

Q. And what is the business of that concern?

A. We specialize in the appraisal of properties for governmental agencies, governmental bodies, and utility companies, and then in the acquisition of rights of way for both governmental bodies and utility companies.

Q. Do you keep a staff of employees and experts in your organization? A. I do.

Q. About how many have you at the present time?

A. On our pay roll at the present time, we have

Defendants' Exhibit "O" (Continued)

about eight, but we have a great many others who are on constant call, for instance, surveyors and engineers on certain jobs.

Well, for instance, we just completed a 600-mile deal for Standard Oil Company in Utah, Idaho, Oregon, and Washington. We didn't have to bring any engineers in on that job, because Standard's engineers did that work, but in some instances it is necessary, and that is when we bring them in.

Q. Give us a brief narrative of your experience as an appraiser, particularly your connection with the public bodies of this State and Nation, say, over the last 10 or 15 years.

A. I did appraisal work for the Department of Water and Power in the City of Los Angeles in the '30s in the construction of or for the construction of Boulder Canyon transmission line from Boulder Dam.

Also for water supply which the department proposed to bring in from a location north of Bishop, somewhat in the general area of Levining.

Then we did several other jobs for the department at that time.

Q. What other public body have you done appraisal work for?

A. I have done work for the Department of Finance and the State of California, quite a few appraisal jobs for the department.

The United States Treasury, San Francisco office, called me in on a job somewhere in the general location of Pismo Beach. That was on a shipyard,

Defendants' Exhibit "O" (Continued)

San Francisco shipyard, that had been taken over by the Department. I didn't do too much work on that. However, I was called in to appraise machinery.

The County of Ventura, I handled the appraisal and the acquisition rights of way of Matilija Dam and Casitas Dam, and also for the Ventura River levee, from the ocean back to the oil field, which was a distance of approximately two and a half miles. I appraised all that property.

Q. Did it comprise both rural and business?

A. Yes, we had business properties there. There were service stations and motels and some business houses and some groves, and then some raw land, too, like the Taylor Ranch in Ventura County, a very large ranch, possibly one of the largest ranches in Ventura County. We didn't appraise the ranch. We appraised quite a large taking strip along the Ventura River levee, which was formerly a part of the Taylor Ranch.

The widening of Foothill Boulevard in Pasadena, we appraised that for the City of Pasadena, with the State of California having an interest in the widening of the boulevard itself. We appraised and acquired the right of way.

Rosecrans in Compton, the same situation prevailed there.

With Standard and with the Texas Oil Company, I have already mentioned the 600-mile deal for Standard through those neighboring States. There was a 175-mile deal in the early '40s, from

Defendants' Exhibit "O" (Continued)

Kettleman Hills to San Francisco, and several other jobs in Los Angeles County.

With the Texas Oil Company, there was about a 96-mile acquisition through Kern County, Fresno, Tulare, Stanislaus, and a few other counties.

Associated Oil, approximately 26 miles in Santa Barbara County, in the general area of Gavota Pass, with the waste water disposal districts. These districts reach all the larger oil companies in Southern California. We represented the district in the area of Signal Hill, water coming from the wells that must be disposed of in a particular area.

Also, the Sante Fe Waste Water Disposal District, we represented them in a couple of instances, and we are representing them at the present time.

The Southern California Gas and Southern Counties Gas, we appraised and acquired rights of way for the Big Inch gas line, which originated in Texas and New Mexico. However, our appraisal work started at the Colorado River east of Blythe and terminated in Santa Fe Springs, Los Angeles.

Q. A distance of how many miles?

A. About 267 miles, more or less. I may be somewhat incorrect.

Q. Did that take you near the Palm Springs area?

A. Yes, it did. We were north of the Palm Springs area. We were north of the highway over near One Thousand Palms. After we left Indio, we were on the—well, it worked back into the mountains between Indio and Banning and Beaumont. We

Defendants' Exhibit "O" (Continued)

were about two and a half miles north of One Thousand Palms, for instance, north of the Alonzo Bell property and Hidden Springs Ranch. That is Charley Doyle's property.

As I say, that terminated in Los Angeles, but it took in the Palm Springs area.

We have done—when I say "we," I like to use the word "we" instead of "I"—we have done a considerable amount of appraisal work for the Southern California Edison Company.

As a matter of fact, I believe we do most of Edison's appraisal work. In the last year, I believe we have done 35 or 40 appraisal jobs for Edison. Here recently we completed about a 39-mile appraisal for the proposed construction of a transmission line along the San Gabriel River in Los Angeles County, both sides. We are now negotiating and acquiring the rights of way for this transmission line.

We are doing work now—we didn't appraise, however, but we are acquiring properties in four different areas. The newspapers call them "slum clearances." That is the Housing Authority of the City of Los Angeles. We are working on two of those projects. Our contract calls for four, for appraising the entire area of four of them. One we are working on is Rosehill. I had a call this morning on the Aliso Pico, which is over on First Street. We are preparing, and we are ready to start on that. They want us to start tomorrow.

Defendants' Exhibit "O" (Continued)

That, in general, Judge, takes in some of them. There are more, but that is general.

Q. I assume you have been pretty busy.

A. I have been awfully busy, and it has been hard to come to court.

Q. Are you a graduate of a university?

A. Yes, a Catholic university.

Q. What is it? Notre Dame? A. Yes.

Q. That's a good school. What degree did you take at Notre Dame?

A. I had my bachelor's and master's there.

Q. Were you ever sent by the City of Los Angeles to visit any other States which involved appraisal work?

A. Not exactly appraisal work, Judge.

Q. I won't dwell on it, then.

A. I was sent by the Department of Water and Power, I believe it was in 1934, and, well, there were quite a few assignments that I was given at that time, in Phoenix, Arizona, Sullivan, Missouri, Wheeling, West Virginia, Ashland, Kentucky. I went as far as Wheeling, West Virginia, and then worked back in Milwaukee, Chicago, and Kansas City.

Q. What really was your main object there?

A. In acquiring rights of way, rights of way, that is, for the Boulder Canyon transmission line. At Knoxville, Tennessee, it was on a damage suit that was brought against the city. The purpose of that was to locate a certain party and bring him back as a witness.

Defendants' Exhibit "O" (Continued)

The following year the department sent me up to Victoria, British Columbia, and Vancouver, British Columbia.

Q. Have you told all the experience you have had in appraisal work in or near the Palm Springs area prior to the time I am about to question you on?

A. There was a little job I did in Palm Springs that didn't amount to too much. Dolores Hope was interested in buying some property. I don't remember now which section that property was located on. I did at the time I testified in 1947. I believe it was the first investment that Dolores herself made, and she did that irrespective of Bob at the time.

Before she bought, I did appraise those lots. I forget what she paid.

Q. Have you been acquainted with the City of Palm Springs and watched its growth and development?

A. Yes.

Q. I will ask you whether or not, at the request of the petitioners in this case, consisting of Oliver O. Clark, David D. Sallee, and myself, you made an appraisal of certain property in Palm Springs?

A. I did.

Q. What properties were they?

A. Those are the properties in the name of Lee Arenas, located in Sections 14 and 26, four acres, two acre parcels in Section 14, and 94 acres, more or less, in Section 26.

* * * * *

Defendants' Exhibit "O" (Continued)

By Mr. Brett:

Q. Mr. Gallagher, your appraisal of the Lee Arenas parcels was in 1947?

A. That is correct.

Q. Have you been back to the property since that date? A. I have not.

Q. Had you ever made any appraisal in the City of Palm Springs prior to the appraisal of the Lee Arenas properties?

A. I mentioned Dolores Hope, those three lots. I will say, Mr. Brett, that I was in Palm Springs with some of the appraisers for the U. S. Engineers, the Corps of Engineers, when some of those properties were acquired there.

Q. When some of the Government property was acquired?

A. That's right. I didn't appraise, but I was down there and I was consulted on some of those appraisals.

Q. That was in the period prior to 1945?

A. That is correct.

Q. In fact, it was approximately 1942?

A. Approximately 1942.

Q. But with the exception of appraising some three lots for Dolores Hope—when was that, with reference to 1947? Before or after?

A. That was before 1947. I should say about 1946. I believe I am correct there. It was either 1945 or 1946.

Q. Then, as I understand it, with the exception of the fact that you accompanied some government

Defendants' Exhibit "O" (Continued)

men who were appraising some land in 1942 in the Palm Springs area, and one visit to Palm Springs to appraise some two or three lots for Dolores Hope in 1946, and the appraisal you made in 1947, you have had no further activity with reference to Palm Springs?

A. Except with the Big Inch gas line that came through the Palm Springs area, north of Palm Springs, however.

Q. How far north from Palm Springs, about?

A. I should say, if we use Ramon Road as a pivot point, and I had time, Mr. Brett—

Q. Isn't it approximately seven or eight miles?

A. I will give it to you. I want to get my directions, because I am trying to go back three years in memory now, with all the other appraisal jobs I had, and I don't want to make a mistake or give any misconception whatever. If you will kindly bear with me, I will try to straighten myself out, as best I can.

I should say about eight to eight and one-half miles north, or eight to eight and one-half miles east. I got my direction somewhat wrong.

Q. Since this 1947 appraisal of the Lee Arenas property, you have not returned to that area to make an appraisal?

A. That is correct.

Q. And you have not personally visited the site of any of these properties since 1947?

A. That is correct.

Q. (By Mr. Preston): Go ahead with what you

Defendants' Exhibit "O" (Continued)

did to prepare yourself for the expression of an opinion as to the market value of these properties since 1947.

A. In 1947, I visited the Arenas properties and walked on the properties. That is on Section 14. I did not walk over the entire area, but I did walk in from Indian Avenue by these old buildings that are on Section 14. I did the same thing in Section 26.

Then I drove east on Ramon Road to Sunrise north on Sunrise—Sunrise is the easterly boundary line of Section 14. Then north, I believe to Alejo, which is the northerly boundary line of Section 14. I drove around the section, looked at improvements in the sections close to Section 14, and to Section 26.

Then I went to the County Engineer at Riverside and secured a zoning map and a use map. I believe I got my use map from the county engineering department.

I talked to the Water Engineer at Riverside. His name, I cannot remember now.

The Assessor's office at Riverside, we did considerable work in the Assessor's office, trying to ascertain what in their opinion the market value of property was in Section 14 and Section 26, and received considerable information from them.

Then the City Engineer at Palm Springs, and one of the banks, talked to the manager of one of the banks. I am awfully sorry I didn't remember these names. I like to be so well prepared, but unfortunately I am not right now.

Defendants' Exhibit "O" (Continued)

I did talk to the manager of one of the banks there. Talked to the Chamber of Commerce, the City Manager of Palm Springs. I talked to a great many people around Palm Springs.

I talked to brokers and to some property owners. I believe at the time I talked to Mrs. McManus. I am not quite sure of that.

I visited some of the dude ranches to see what particular type of construction was on these dude ranches and how close the ranches were to the two sections that I am referring to.

I made a study of Palm Springs, the location of Palm Springs in relation to its distance from Los Angeles and from the border of Mexico and also from Indio, on different border lines, and found between Palm Springs and Indio there were several communities that had grown up just recently. That would be south of both Section 14 and Section 26.

These communities were Cathedral City and Palm Village, and there were a couple of others in there.

I ascertained that Palm Springs was on the main line of the Southern Pacific Railroad and is serviced by the railroad and by Greyhound buses, Greyhound buses several times a day. The city is also serviced by transcontinental and local air lines.

The general geographic location of Palm Springs and climatic conditions, the rainy season, and whatever considerations an appraiser pays particular attention to.

I found that there are several, not only nationally, I believe, but internationally known places around

Defendants' Exhibit "O" (Continued)

the Palm Springs area. For instance, the Palm Canyon, which is noted for prehistoric Washington palms, or something of that nature. That is six and a half miles south of Palm Springs. Andreas Canyon Road for the palisades, the palms, and old Indian caves. Chino Canyon for the water springs, and several other canyons.

That entertainment was furnished by some very well established places of entertainment. I have a list of them. The list is quite numerous.

That there are a great many hotels in Palm Springs. I ascertained the location of the hotels, the number of rooms, and the rates charged.

For instance, the Ambassador Hotel—I won't go into all of them, because I have quite a list—the Ambassador Hotel at 640 Indian Avenue, the rates are \$40.00 double and \$22.50 single, and there is a swimming pool——

Q. What did you do with reference to examining other pieces of property?

A. I examined quite a few properties in order to establish comparability, to find out what the properties sold for, and in many instances I investigated the assessed value of those properties.

I did that for this reason. I have quite an assessed valuation schedule. I believe there are 66 of them. I realize that the assessed valuation doesn't represent market value. However, I believe that the offices of the county assessors in the State of California have a very fine idea of market value, and when they assess the property they assess at a

Defendants' Exhibit "O" (Continued)

certain percentage of market value. That belief of mine is supported by this fact——

Mr. Brett: Just a minute.

Q. (By Mr. Preston): Perhaps that would be a little further than the question that I have put to your would warrant. Continue with the recital of the properties, if you will, if you haven't finished, that you examined with reference to values.

A. Well, I secured an idea of what properties sold for around Section 14 and also around Section 26.

Q. About how many properties do you think you examined in that respect?

A. Twenty-some-odd properties, Judge. I will have to say, however, that I was not out on all those 20 properties. I was on quite a few of them.

Q. Where did you get your information regarding the properties?

A. The title company in Riverside County, and also in the Recorder's office. I have the I.R.S. stamps on some of those sales, which in a way indicates what the property sold for.

Then, after ascertaining what properties in the general area of the Arenas properties had sold for, or were listed for, I tried to strike an average as to what in my opinion was the fair market value of the two-acre parcels in Section 14 and the five and ten acres and forty acres in Section 26.

Q. Did you compile a written report in connection with those services? A. I did.

Defendants' Exhibit "O" (Continued)

Q. And it is on file in another division of this Court, in the Lee Arenas case, now, is it not?

A. Yes, sir.

Q. Your report is as of what date?

A. I believe December 9, 1947.

Q. At that date you had an opinion, did you, and expressed it, as to the market value of each of these Lee Arenas parcels? A. I did.

* * * * *

Cross Examination

Q. (By Mr. Brett): Mr. Gallagher, you testified at some length as to your previous activities. Your activity in connection with the acquisition of a right of way in the Boulder Dam area was over in the State of Arizona, is that correct?

A. Nevada and California.

Q. Nevada and California? A. Yes.

Q. Approximately how far from Palm Springs?

Mr. Preston: What point?

Mr. Brett: Any point.

The Witness: Let's say starting at Boulder Dam?

Q. (By Mr. Brett): Yes.

A. Mr. Brett, you asked me those questions before and I gave you my answers then. At that time I was well prepared. My distances are in that report. I should say Las Vegas is about—don't hold me too tight to these distances—Las Vegas is about 250 miles from Los Angeles, and Palm Springs about 109 miles from Los Angeles. Maybe between 200 and 275 miles away, that is Las Vegas itself.

Defendants' Exhibit "O" (Continued)

San Bernardino, we came through San Bernardino, through the hills at San Bernardino, and as we worked into Los Angeles——

Q. What is the nearest point to Palm Springs in that activity?

A. I should say San Bernardino.

Q. That would be about how far? Well, do you know whether it is better than 80 miles? Isn't it?

A. I don't know.

Q. And that activity was for the purpose of acquiring a right of way?

A. That is correct.

Q. Not any fee property, but a right of way on property? A. That is correct.

Q. You stated you had some activity for the U. S. Treasury Office, the San Francisco office of the United States Treasury, at Pismo Beach. That is in San Luis Obispo County?

A. That is correct.

Q. And it was approximately how far from Palm Springs?

Mr. Preston: Objected to as immaterial.

The Court: Overruled. You have gone into these matters.

Q. (By Mr. Brett): Isn't that at least 250 miles from Palm Springs?

A. Yes, I would answer to that.

Q. Then you stated you had some activities in connection with various dams, the Matilija Dam and the Casitas Dam in Ventura County.

A. Yes, sir.

Defendants' Exhibit "O" (Continued)

Q. Ventura County is north of Los Angeles County? A. About 65 miles.

Q. And that is approximately 125 to 150 miles from Palm Springs, is it not?

A. Approximately.

Q. Your Ventura River levee would also be at least that distance from Palm Springs?

A. That is correct.

Q. Then you stated you had some employment in connection with the widening of Foothill Boulevard. Foothill Boulevard is a boulevard that runs in both Los Angeles County and San Bernardino County? A. Yes.

Q. Where was your activity?

A. In Pasadena.

Q. That would be how far from Palm Springs?

A. I would say 100 miles, more or less.

Q. That was the acquisition of a right of way?

A. No—Yes, more or less. It was the widening of Foothill Boulevard. That is correct.

Q. Now, then, you stated you had some employment for the Associated Oil Company at Gavota Pass in Santa Barbara County. That is in the northern part of Santa Barbara County, isn't it?

A. It is between Pismo Beach and Santa Barbara. It is about 35 miles north of Santa Barbara.

Q. And that is about—

A. 109 miles, about the same distance from Los Angeles that Palm Springs is from Los Angeles.

Q. In other words, it is over 200 miles from Palm Springs? A. That is correct.

Defendants' Exhibit "O" (Continued)

Q. You stated you had some work in connection with some pipe line commencing at the Colorado River east of Blythe. Blythe is right on the Colorado River at the east boundary of the south part of California? A. That is correct.

Q. It would be about how far from Palm Springs?

A. Well, oh, I should say about 175 to 200 miles.

Q. That was for a pipe line right of way?

A. That was the Big Inch gas line.

Q. To bury a pipe in the ground?

A. That is correct.

Q. You said that you were employed in connection with the transmission line along the San Gabriel River. That is in Los Angeles County just a few miles from this court house?

A. Yes, sir.

Q. That is about how far from Palm Springs?

A. About 100 miles.

Q. You also stated you were employed in connection with some slum-clearance project. As I understand, you have just started upon this work.

A. No. We have been on Rose Hill.

Q. And Rose Hill is not very far from this court house? A. No.

Q. How far?

A. About three miles, three or four miles.

Q. How far from Palm Springs?

A. About 105 miles.

Q. And both Rose Hill and Aliso-Pico you re-

Defendants' Exhibit "O" (Continued)

ferred to are right in the heart of Los Angeles City?

A. That is correct.

Q. You stated you did go to Palm Springs at one time in behalf of Dolores Hope, and I understand she is the wife of Bob Hope, the movie and radio actor.

A. Yes, sir.

Q. Did you go there as her agent, merely to indicate to her what she should or should not buy?

A. Dolores was interested in buying some property in Palm Springs, and before she bought she wanted to know whether or not the location she had in mind was the correct location, and asked me if I would go down and see if I could find something for her, which I did.

I talked to Culver Nichols and I asked Culver to pick up a couple lots for Mrs. Hope in a location which in his opinion would have a future valuation, a location where the property values were increasing, and one of the brokers in his office—I can't remember his name—was the one who found the three lots and told me what the price was, and I recommended to Mrs. Hope that she should buy those lots.

Q. That was your activity in that regard?

A. That is correct.

* * * * *

Q. You stated as a part of your preparation you contacted the County Assessor at Riverside.

A. That is correct.

Q. Riverside is the county seat of the county in which Palm Springs is located?

A. That is correct.

Defendants' Exhibit "O" (Continued)

Q. Was the County Assessor in Riverside able to give you any information as to assessed values in either of these two sections that were a part of the Indian reservation, Section 14, in which the two-acre parcel lay, or Section 26, in which the five- and forty-acre parcels lay?

A. I received no information as to assessed values of properties in Section 14 and Section 26. Information on assessed values was on properties on the surrounding sections.

Q. You received information that those particular properties were not assessed for taxation?

A. That is correct.

Q. You stated you did get the assessed values of properties which surrounded Section 14 in all four directions?

A. Yes, sir.

Q. To the north was Section 11?

A. That is correct.

Q. To the west was Section 15?

A. That is correct.

Q. To the east was Section—what was the number there?

A. 13.

Q. Sir?

A. 13.

Q. 13. And to the south was Section 23?

A. Section 23 to the south, that is right.

Q. First you found that all four of those sections were not Indian reservations, but were white-owned sections?

A. Yes, sir.

Q. Section 11 was highly developed with one of the principal hotels in Palm Springs, the El Mirado,

Defendants' Exhibit "O" (Continued)

and with many homes of wealth people, is that not correct? A. That is correct.

Q. Section 15 was developed with the principal motel in Palm Springs, the Desert Inn, and you found it was assessed at a valuation of \$900,000.00, didn't you? A. The Desert Inn property?

Q. Yes.

A. I don't remember whether or not I even checked the assessed valuation of the Desert Inn property.

Q. You found it also had the principal business thoroughfare in Palm Springs, Palm Canyon Drive, Section 15? A. That is correct.

Q. And that it contained many business properties and many homes of wealth people?

A. That is correct.

Q. Section 23 contained the Biltmore Hotel property, one of the finest hotels in the area, at the south end and along the state highway?

A. That is correct.

Q. And contained the Deep Well Ranch, another extensive development?

A. That is correct.

Q. And it contained other developments of a high-class character? A. Yes, sir.

Q. And Section 14 contained the race track and an amusement area, as well as the airport?

A. Yes, and there were some subdivision lands in Section 13 from Alejo Road to McCallum Way, and south of McCallum Way to Baristo Road.

Q. Is it not true, also, Mr. Gallagher, you took

Defendants' Exhibit "O" (Continued)

the assessed values irrespective of whether the particular piece was or was not improved, and you came to what you deemed to be an appropriate and proper total of the assessed value of 11 at so many dollars as the assessed value of that entire section?

A. We are considering the vacant land, aren't we, Mr. Brett? I did not give any weight whatsoever to the assessed value of the improved property.

Q. You took assessed value of vacant land in that Section? A. Yes.

Q. Which was improved with many fine homes?

A. That is correct.

Q. You took the value of 15, which included the business district? A. That is correct.

Q. And you took the assessed value of 13, which included the airport and the race track area?

A. That is correct.

Q. And you took the assessed value of 23, which included the fine hotel, the Deep Well Ranch, and other properties?

A. That is correct, plus—pardon me.

Q. Go ahead.

A. All right. Plus some sales and also some listings.

Q. In other words, you get your figures both from assessments and from some listings and some sales, and arrived at a general value, in your opinion, of these four sections?

A. That is correct.

Q. Then you added the four sections together and you came to a total, didn't you? A. Yes.

Defendants' Exhibit "O" (Continued)

Q. Then you divided by four?

A. That is correct.

Q. And then you determined that Section 14 had 640 acres in it? A. Yes, sir.

Q. And you determined, in your opinion, because Section 14 was in part being used by what you considered not an advantageous use, shacks, and so forth—you learned that, didn't you?

A. Yes.

Q. You depreciated Section 14 to a certain percentage because it had shacks on it?

A. That's right.

Q. And then you took this X, divided by four, and divided that by 640, and arrived at the average value per acre, didn't you?

A. Ultimately, and may I answer——

Q. That is what you did, isn't it?

A. Yes.

Q. Now, Mr. Gallagher, you had also to evaluate Section 26, didn't you? A. Yes, sir.

Q. 26 had the 25- and 40-acre parcels?

A. Yes.

Q. Section 26 had Section 23 above and to the north? A. Yes, sir.

Q. And had a section to the east of it, that was 27? A. 25.

Q. 25. It had a section to the west of it, that was 27? A. Yes, sir.

Q. Was there any section below it?

A. There was. I don't have the number of that section below it.

Q. There was a section here we will mark "X"

Defendants' Exhibit "O" (Continued)

below. You did precisely the same thing in reference to the properties in 26? A. That is true.

Q. Determined in your opinion what the average value of the four surrounding sections was per acre, by first fixing the—based upon assessed values, some sales and some listings, you formed your opinion of the value of that whole section?

A. That is correct.

Q. And then you added the four sections together and divided by four?

A. In this instance, three.

Q. You disregarded this one? A. Yes, sir.

Q. You divided by three and you came to an average acreage value? A. Yes, sir.

Q. You didn't depreciate this property because you didn't consider it had the disadvantageous use, so by dividing by three, you then divided by 640, and came to an acreage value, didn't you?

A. Yes, sir.

Mr. Brett: That's all.

Redirect Examination

Q. (By Mr. Preston): Is that all the factors that entered into the proposition?

A. I mentioned, Judge, I had considered some sales in that area there, what property sold for in those sections, and what property was listed for. Not only the assessed valuations, but also I combined the assessed valuations with listings and also sales, and the balance was—I was satisfied in my mind that I was correct and I was correct in my approach.

Defendants' Exhibit "O" (Continued)

Q. You checked your computations?

A. I did.

Mr. Preston: That's all.

Mr. Brett: That's all. Thank you.

(Witness excused.)

Admitted in evidence 2/7/51.

RESPONDENTS' EXHIBIT "P"

[Public Law 322—81st Congress]

[Chapter 604—1st Session]

[H. R. 5310]

AN ACT

To confer jurisdiction on the State of California over the lands and residents of the Agua Caliente Indian Reservation in said State, and for other purposes.

Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That on and after January 1, 1950, all lands located on the Agua Caliente Indian Reservation in the State of California, and the Indian Residents thereof, shall be subject to the laws, civil and criminal, of the State of California, but nothing contained in this section shall be construed to authorize the alienation, encumbrance, or taxation of the lands of the reservation, or rights of inheritance thereof whether tribally or individually owned, so long as the title to such lands is held in trust by the United States, unless such alienation,

encumbrance, or taxation is specifically authorized by the Congress.

Sec. 2. Notwithstanding any other provision of law or the allotment in severalty to Indians of the Agua Caliente Indian Reservation, and subject to the provisions of section 3 of this Act, no valid and existing permit covering lands located on the reservation, the terms of which have been fully met by the permittee, shall be terminated without the consent of the permittee prior to December 31, 1950.

Sec. 3. The city of Palm Springs in Riverside County, California, with the approval of the Secretary of the Interior, and subsequent to an appropriate resolution adopted by the business committee of the Agua Caliente Band of Mission Indians, giving approval, is hereby granted an easement not to exceed sixty feet in width for public use, and the widening and improvement of Indian Avenue along and upon section 14, township 4 south, range 4 east, San Bernardino base and meridian, in said city, said easement generally following and adjoining the west section line, but within the confines of its middle portion, for the isolation and preservation of the Indian Hot Springs and the palm trees in said area, the center line of said easement shall follow an arc having a radius of one thousand two hundred seventy feet, the center and most easterly portion of the arc being one hundred forty feet east of the quarter section corner of said section 14. Said city also is granted an easement for similar purposes along and upon the westerly ten feet of said section 14, lying within the arc. Said improvements

shall be made at the expense of said city: Provided, That any holder of a valid permit covering land affected by the said widening of Indian Avenue shall be entitled to just compensation from said city of Palm Springs for the detriment suffered, taking into consideration benefits deriving from such improvement.

Approved October 5, 1949.

Admitted in evidence 2/7/51.

RESPONDENTS' EXHIBIT "Q"

[Public Law 904—81st Congress]

[Chapter 1192—2d Session]

[H. R. 9272]

AN ACT

To amend the Act of October 5, 1949 (Public Law 322, Eighty-first Congress), so as to extend the time of permits covering lands located on the Agua Caliente Indian Reservation.

Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That section 2 of the Act entitled "An Act to confer jurisdiction on the State of California over the lands and residents of the Agua Caliente Indian Reservation in said State, and for other purposes", approved October 5, 1949, is amended by striking out "December 31, 1950" and inserting in lieu thereof "December 31, 1951": Provided, That this amendment shall not extend

the duration of any permit which would, according to its own terms, expire on or before December 31, 1951.

Approved December 29, 1950.

Admitted in evidence 2/7/51.

[Endorsed]: No. 13103. United States Court of Appeals for the Ninth Circuit. United States of America and Lee Arenas, Appellants, vs. John W. Preston, Oliver O. Clark and David D. Saltee, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed September 18, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13,103

UNITED STATES OF AMERICA and
LEE ARENAS,

Appellants,

vs.

JOHN W. PRESTON, OLIVER O. CLARK and
DAVID D. SALLEE,

Appellees.

STATEMENT OF POINTS AND DESIGNA-
TION OF RECORD TO BE PRINTED

The United States of America and Lee Arenas, appellants in the above-entitled case, adopt the statement of points filed in the district court as the statement of points to be relied upon in this Court, and desire that the whole of the record as filed and certified be printed with the following exceptions, with respect to which it is proposed to obtain an order for consideration in original form:

1. The maps and photographs included in Petitioners' Exhibit 14;
2. Petitioners' Exhibits 14-A, 14-B, and 17;
3. Respondents' Exhibits A, B, and C.

4. The maps and photographs included in Respondents' Exhibit J.

Respectfully submitted,

/s/ A. DEVITT VANECH,
Assistant Attorney General,
/s/ ROGER P. MARQUIS,
/s/ JOHN C. HARRINGTON,
Attorneys, Dept. of Justice,
Washington, D. C.

Certificate of Service attached.

[Endorsed]: Filed Sep. 26, 1951. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

MOTION FOR CONSIDERATION OF ORIGINAL EXHIBITS

The United States of America and Lee Arenas, appellants in the above-entitled cause, move this Court for an order authorizing the consideration of the maps and photographs included in Petitioners' Exhibit No. 14 and Respondents' Exhibit J, and in their entirety Petitioners' Exhibits Nos. 14-A, 14-B and 17, and Respondents' Exhibits A, B and C, even though said exhibits and parts of exhibits are not included in the printed record, such consideration to be the same as if said exhibits had been designated for inclusion in the printed record.

Respondents' Exhibit C is the Land Use Ordinance of the City of Palm Springs, California, and

the other exhibits or parts of exhibits are either maps or photographs of the area involved. They were designated as part of the record on appeal so that they would be available for examination or reference in this Court. However, it is not believed that they are of sufficient materiality to justify the expense of reproduction in the printed record.

/s/ A. DEVITT VANECH,
Assistant Attorney General,
/s/ ROGER P. MARQUIS,
/s/ JOHN C. HARRINGTON,
Attorneys, Dept. of Justice,
Washington, D. C.

Certificate of Service attached.

[Endorsed]: Filed Sep. 27, 1951. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

ORDER FOR CONSIDERATION OF ORIGINAL EXHIBITS

Upon consideration of the motion filed by appellants for an order authorizing consideration of the maps and photographs included in Petitioners' Exhibit No. 14 and Respondents' Exhibit J, and consideration in their entirety of Petitioners' Exhibits Nos. 14-A, 14-B and 17, and Respondents' Exhibits A, B and C, and good cause appearing therefor, it is hereby ordered that said exhibits and parts of exhibits shall be used and considered by this Court upon said appeal with the same force and effect as

though they were incorporated in and made a part of the printed transcript of record.

September 26, 1951.

/s/ CLIFTON MATHEWS,

/s/ HOMER BONE,

/s/ WM. E. ORR,

Circuit Judges.

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Clerk.

